2 May 2017

Form 10 Registration Statement

Palo Alto, CA, United States – AirXpanders, Inc. (ASX: AXP), a medical device company focused on the design, manufacture, sale and distribution of the AeroForm® Tissue Expander System, has filed with the United States Securities Exchange Commission (**SEC**) a general form for registration of securities on the SEC's Form 10. A copy of the Form 10 is attached.

AirXpanders has filed the Form 10 with the SEC in order to register its shares of Class A common stock (**Shares**) under section 12(g) of the US Securities Exchange Act of 1934, as amended (**Exchange Act**). AirXpanders has filed the Form 10 because it is now required to do so under the Exchange Act (due to recent growth in the number of holders of record of its common stock); it is not filing the Form 10 in connection with any new issue of securities.

The Form 10 is now subject to a period of review and comment by the SEC. AirXpanders will respond to any comments received by the SEC and may amend the Form 10 in response to such comments. The Form 10 and any amendments thereto will be available at http://www.sec.gov/edgar.shtml.
Once AirXpanders' Shares have been registered with the SEC, AirXpanders will be subject to the reporting requirements of the Exchange Act, which will require AirXpanders to file with the SEC annual, quarterly and other reports, and will be required to comply with all other applicable obligations of the Exchange Act.

- ENDS -

Company	***Investor relations***
Scott Dodson President & CEO Tel: +1 (650)-390-9008 Email: sdodson@airxpanders.com	Kyahn Williamson WE Buchan Tel: +61 (3) 9866 4722 / + 61 (0)401018828 Email: kwilliamson@buchanwe.com.au

About AirXpanders

Founded in 2005, AirXpanders, Inc. (www.airxpanders.com) designs, manufactures and markets innovative medical devices to improve breast reconstruction. The Company's AeroForm Tissue Expander System, is used in patients undergoing two-stage breast reconstruction following mastectomy. Headquartered in Palo Alto, California, AirXpanders' vision is to be the global leader in reconstructive surgery products and to become the standard of care in two-stage breast reconstruction. AirXpanders is listed on the Australian Securities Exchange under the symbol "AXP", but its listed securitries may not be purchased by U.S. Persons because they bear a special designation on the ASX that precludes such purchase. AeroForm was granted U.S. FDA *de novo* marketing authorization in 2016, first CE mark in Europe in 2012 and is currently licensed for sale in Australia.

Forward-Looking Statements

This announcement contains or may contain forward-looking statements that are based on management's beliefs, assumptions and expectations and on information currently available to management.

All statements that address operating performance, events or developments that we expect or anticipate will occur in the future are forward-looking statements. These include, without limitation, our cash sufficiency forecast; U.S. commercial market acceptance and U.S. sales of our product as well as, our expectations with respect to our ability to obtain verification of our third-party contract manufacturer on a timely basis; our ability to obtain reimbursement for our products; our ability to become the global leader in reconstructive surgery products and to become the standard of care in two-stage breast reconstruction.

You should not place undue reliance on forward-looking statements because they speak only as of the date when made. AirXpanders does not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. AirXpanders may not actually achieve the plans, projections or expectations disclosed in forward-looking statements. Actual results, developments or events could differ materially from those disclosed in the forward-looking statements.

For more information, refer to the Company's website at www.airxpanders.com.

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

FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES
Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934

AirXpanders, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**20-2555438**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

1047 Elwell Court
Palo Alto, California 94303
(Address of principal executive offices) (Zip Code)

(650) 390-3000
(Registrant's telephone number, including area code)

Securities to be registered pursuant to Section 12(b) of the Act:
None

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

Class A Common Stock, par value $0.001 per share
(Title of class)

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	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☐
Emerging Growth Company	☒		

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

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EXPLANATORY NOTE

Pursuant to Section 12(g) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, we are filing this General Form for Registration of Securities on Form 10 to register our Class A Common Stock, par value $0.001 per share, or Common Stock. The Common Stock is publicly traded on the Australian Securities Exchange, or ASX under the ticker "AXP", in the form of CHESS Depositary Interests, or CDIs. CDIs are units of beneficial ownership in our shares of Common Stock held by CHESS Depositary Nominees Pty Limited, or CDN, a wholly-owned subsidiary of ASX Limited, the company that operates the ASX. The CDIs entitle holders to dividends, if any, and other rights economically equivalent to our shares of Common Stock on a 3-for-1 basis, including the right to attend stockholders' meetings. The CDIs are also convertible at the option of the holders into our shares of our Common Stock on a 3-for-1 basis, such that for every three CDIs converted, a holder will receive one share of Common Stock. CDN, as the stockholder of record, will vote the underlying shares in accordance with the directions of the CDI holders.

This registration statement will become effective automatically by lapse of time 60 days from the date of the original filing pursuant to Section 12(g)(1) of the Exchange Act or within such shorter period as the Securities and Exchange Commission, or the SEC, may direct. As of the effective date we will be subject to the requirements of Regulation 13(a) under the Exchange Act and will be required to file annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K, and we will be required to comply with all other obligations of the Exchange Act applicable to issuers filing registration statements pursuant to Section 12(g) of the Exchange Act.

The market data and other statistical information contained in this registration statement are based on independent industry publications, government publications, reports by market research firms and other published independent sources. Some data is also based on our good faith estimates, which are derived from other relevant statistical information, as well as the independent sources listed above. Although we believe these sources are reliable, we have not independently verified the accuracy and completeness of such information.

Some numerical figures included in this registration statement have been subject to rounding adjustments. Accordingly, numerical figures shown as totals in certain tables may not be an arithmetic aggregation of the figures that preceded them.

AirXpanders, Inc. was incorporated in Delaware in 2005 and is registered as a foreign company in Australia. Our Australian branch office conducts our Australian sales and marketing activities, as well as some clinical research activities.

Unless otherwise noted, references in this registration statement to "we," "us," "our," "Company," or "AirXpanders" refer to AirXpanders, Inc., a Delaware corporation, and its branch office. Our principal executive offices are located at 1047 Elwell Court, Palo Alto, California 94303. Our telephone number is (650) 390-3000. Our website address is www.airxpanders.com. We have included our website address in this registration statement as an inactive textual reference only. The information on, or that can be accessed through, our website is not part of this registration statement and should not be considered a part of this registration statement.

AIRXPANDERS, AIRXPANDER (in Australia) and AEROFORM are registered trademarks of the Company. All other trademarks, tradenames and service marks mentioned in this registration statement are the property of other organizations.

Unless indicated otherwise in this registration statement, all references to "$" or "dollars" refer to United States (U.S.) dollars, the lawful currency of the United States of America. References to "A$" refer to Australian dollars, the lawful currency of the Commonwealth of Australia.

IMPLICATIONS OF BEING AN EMERGING GROWTH COMPANY

As a company with less than $1.0 billion in revenue during our most recently completed fiscal year, we qualify as an "emerging growth company" as defined in Section 2(a) of the Securities Act of 1933, as amended, or the Securities Act, as modified by the Jumpstart Our Business Startups Act of 2012, or the JOBS Act. As an emerging growth company, we may take advantage of specified reduced disclosure and other requirements that are otherwise applicable, in general, to public companies that are not emerging growth companies. These provisions include:

- Reduced disclosure about our executive compensation arrangements;
- No non-binding shareholder advisory votes on executive compensation or golden parachute arrangements; and
- Exemption from the auditor attestation requirement in the assessment of our internal control over financial reporting.

We may take advantage of these exemptions for up to five years or such earlier time that we are no longer an emerging growth company. We would cease to be an emerging growth company if we have more than $1.0 billion in annual revenues as of the end of a fiscal year, if we are deemed to be a large accelerated filer under the rules of the SEC, or if we issue more than $1.0 billion of non-convertible debt over a three-year-period. We intend to take advantage of the reduced disclosure obligations.

The JOBS Act permits an emerging growth company to take advantage of an extended transition period to comply with new or revised accounting standards applicable to public companies until such standards would otherwise apply to a private company. We have elected to avail ourselves of this exemption to take advantage of the extended transition period for complying with new or revised accounting standards.

FORWARD-LOOKING STATEMENTS

This registration statement contains forward-looking statements concerning our operating performance and events or developments that we expect or anticipate will occur in the future that are based on management's beliefs, assumptions and expectations and on information currently available to management. Any statements contained in this registration statement that are not of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by terms such as "may," "could," "believes," "estimates," "expects," "intends," or the negative of these words or other similar terms or expressions that involve risks and uncertainties which have not been based solely on historical facts but on our beliefs, assumptions and expectations about our future operating performance, events and results. The forward-looking statements are contained principally in the sections entitled "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business." Forward-looking statements include, but are not limited to, statements about:

- the U.S. commercial market acceptance and U.S. sales of our product;
- our ability or the ability of third-party contract manufacturer to build our product in sufficient quantities or at required quality standards to satisfy anticipated demand;
- our ability to manufacture our product at a lower cost in order to generate positive gross margins;
- our expectations with respect to our ability to further commercialize our product in other markets;
- our ability to develop and commercialize new products including our ability to obtain or maintain reimbursement for our current or new products;
- our expectations with respect to future regulatory submissions and approvals; and
- our expectations with respect to the integrity or capabilities of our intellectual property positions.

Management believes that these forward-looking statements are reasonable as and when made. These forward-looking statements are not guarantees of future performance or development and involve known and unknown risks, uncertainties and other factors that are in some cases beyond our control. As a result, any or all of our forward-looking statements in this registration statement may turn out to be inaccurate. We have included important factors in the cautionary statements included in this registration statement, particularly in the section captioned "Item 1A. Risk Factors," that could cause actual results or events to differ materially from the forward-looking statements that we make.

You are cautioned not to place undue reliance on the forward-looking statements because they speak only as of the date when made. Unless required by law, we do not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. We may not actually achieve the plans, projections or expectations disclosed in our forward-looking statements, and actual results, developments or events could differ materially from those disclosed in the forward-looking statements we make.

ITEM 1. BUSINESS.

Overview

AirXpanders is a U.S. based medical device company whose principal business is to design, manufacture, sell and distribute medical devices used in breast reconstruction procedures following mastectomy. Our AeroForm Tissue Expander System (AeroForm) is a needle-free, patient-controlled tissue expander used in patients undergoing two-stage breast reconstruction following mastectomy prior to the insertion of a breast implant. AeroForm was granted its first CE mark in Europe in October 2012, was approved by Australia's Therapeutic Goods Administration in Australia in October 2013, commenced its initial marketing release of AeroForm in Australia in January 2015, and was granted its U.S. Food and Drug Administration, or FDA, de novo marketing authorization in December 2016 (as a Class II medical device). To date, we have been primarily engaged in developing and launching our initial product technology, completing clinical trials, building the manufacturing infrastructure to support commercialization efforts, recruiting key personnel and raising capital.

Breast cancer is the second leading cause of death in women globally. Most women being treated for breast cancer undergo some type of surgery to address the primary breast tumor. The purpose of the surgery is to remove as much of the cancer as possible. Breast-conserving surgery (also known as lumpectomy or partial mastectomy) can be sufficient for early-stage breast cancer patients. However, for those patients who have a more advanced breast cancer or who have a genetic predisposition for developing breast cancer, treatment often requires mastectomy, which is the removal of one or both breasts.

In the U.S. alone, of the approximately 300,000 new diagnoses of female breast cancer every year, 36% of early-stage patients and 60% of late-stage patients receive a mastectomy. Mastectomies are also performed on a proportion of previously diagnosed patients who originally had a form of breast-conserving surgery, as well as on women undertaking mastectomy as a preventative measure prior to any cancer diagnosis. Approximately 60% of mastectomies in the U.S. involve the removal of both breasts. With increasing awareness, earlier detection and the emerging practice of pre-emptive breast removal surgery, death rates from breast cancer have been declining since the late 1980s, particularly in women younger than 50 years of age, while mastectomy rates have been increasing.

Although a traumatic and painful procedure, mastectomy has become increasingly accepted and adopted as a pre-emptive measure to prevent breast cancer. Women who have been diagnosed with cancer in one breast may elect to have the other breast removed as a precautionary measure. Similarly, preventative surgery to remove both breasts is an increasingly sought after option for women with a strong family history of breast cancer or who have been identified as having disease causing mutations in certain genes, such as BRCA1 or BRCA2, which predispose them to a significantly elevated risk of developing breast cancer. After a mastectomy, breast reconstruction is available to women who want to rebuild the shape and look of the breast.

Breast reconstruction restores breast symmetry after a mastectomy by creating a breast mound, similar in size, shape, and contour to the contralateral breast. The most common technique used in breast reconstruction is two-stage reconstruction which involves tissue expansion to create space for a breast implant. Tissue expansion involves expansion of the breast skin and muscle using a temporary tissue expander. Tissue expanders on the market today are saline-based and require the patient to go to the surgeon's office every few weeks to receive an injection of saline to fill the expander. Typically, it can take several weeks to several months to complete the process to reach the desired volume. This tissue expander is removed after a few months and microvascular flap reconstruction or the insertion of a breast implant is done at the time. Traditional saline-based tissue expanders have silicone outer shells and an external magnetic port to allow for saline fluid injections.

Instead of saline, AeroForm, a needle-free device, uses a controlled delivery of small amounts of carbon dioxide (CO_2) gas to achieve the tissue expansion usually required prior to placement of a breast implant. It eliminates the need for the needle injections required for traditional saline-based tissue expanders, gives patients the ability to control the expansion process themselves and allows patients to achieve full expansion faster than is achieved using traditional saline-based tissue expanders. In a series of clinical trials, AeroForm has been shown to enable patients to proceed to the insertion of a breast implant faster than under the current standard of care.

AirXpanders was incorporated in Delaware in 2005 and is headquartered in Palo Alto, California. We have incurred net losses and cash flow deficits from operations since our inception. During the year ended December 31, 2016, we had revenues of approximately $0.6 million and a net loss of $19.4 million. Our accumulated deficit was approximately $66.3 million at December 31, 2016. To date, our products have been approved for marketing and sales in Europe, Australia and most recently, in the U.S. We commenced the sale of our product in Australia in 2015 and in the U.S. in 2017.

Strategy

Our objective is to become a global market leader in the development and commercialization of medical devices for tissue expansion for breast reconstruction after mastectomy.

Our principal strategies to achieve this objective are as follows:

- **Convert the existing tissue expander market to AeroForm.**

  We believe the traditional method for expanding tissue to accommodate implants for breast reconstruction has not changed significantly in over 40 years. Many women experience discomfort and pain every time they visit their surgeon's office in order to have an injection of saline through the muscle in their chest into the tissue expander via a needle. To achieve the necessary amount of stretching of the skin and muscle required to accommodate a breast implant, these women may need to visit their surgeon's office for an injection every one to three weeks for up to several months.

  AeroForm provides a new approach to tissue expansion that enables the patient to avoid injections altogether and to manage their expansion from wherever they choose. Our clinical trials to date have shown that women can complete the expansion process with AeroForm in a significantly shorter time than traditional tissue expanders (21 days versus 46 days on average).

- **Expand the breast reconstruction market through general awareness.**

  A study of U.S. patients published in 2008 found that approximately two-thirds of patients were not made aware by their surgeon of the availability of breast reconstruction surgery at the time of mastectomy. Ensuring this patient segment is made aware of breast reconstruction options early in their diagnosis and treatment program could result in an increase in the size of the current breast tissue expander market in the U.S.

  Additionally, there are many potential mastectomy patients who opt not to have surgery due to the negative press surrounding traditional saline-based expanders or alternative procedures like flap surgery. As tissue expander based reconstruction is performed close to 72% of the time that reconstruction is chosen in the U.S., educating the market about the existence and availability of alternative breast reconstruction options through targeted communications with surgeons and patients has the potential to greatly expand the market opportunity. Additional work with advocacy organizations, such as the National Organization of Women, The Black Women's Health Imperative and the Oncology Nurse Navigator Society can help us gain access to those who can influence policy, information distribution and advocacy to a large and motivated breast cancer constituency of surgeons and patients.

- **Utilize traditional and social media to inform patients about AeroForm.**

  Despite the substantial proportion of mastectomy patients who are not informed of their reconstruction options by their surgeon at the time of their mastectomy, breast cancer patients as a whole are emerging as one of the most information-seeking and experience-sharing patient groups. They have proven adept at taking news and current events such as Angelina Jolie's decision to have a double prophylactic mastectomy with reconstruction in 2013 and using it as a catalyst to seek and understand more about their own personal situation. By using today's online medical information channels such as WebMD, Mybreastcancer.org, Breastcancer.org, women's health and beauty literature and portals such as Facebook and Twitter, we believe that we will be able to reach many patients, advocates and information seekers to educate them on the availability and benefits of AeroForm before or at the time of their mastectomy, when breast reconstruction decisions are most commonly made.

- **Leverage exceptional clinical results.**

  We have completed four clinical trials which have supported thirteen peer reviewed clinical manuscripts, numerous clinical papers and podium presentations at leading industry and clinical meetings. We believe that we already enjoy a high profile within the breast reconstruction industry. We are hopeful that we will be able to convert the performance of AeroForm in the clinic trials into demand from surgeons and patients.

- **Seek strong margins through increased production volumes and manufacturing automation in a lower cost labor environment.**

  We believe the standard production cost per device for AeroForm will begin to drop as unit volumes increase. This reduction in costs results from reductions in the cost of materials due to anticipated supplier pricing decreases due to higher volume purchases, the implementation of process efficiency initiatives that reduce the labor requirements and increase manufacturing capability, and validation of substitute materials that reduces the material cost.

  We have developed an automation plan which is being implemented to significantly reduce the time required to produce each unit. In addition, we are in the process of implementing a plan to increase our manufacturing capacity with a certified contract manufacturer in Costa Rica, which we expect will reduce labor costs per unit. We believe that increased sales, combined with the automation of the production process and manufacturing in a lower cost of labor market in Costa Rica will enable us to increase gross margins from AeroForm.

- **Obtain broad product distribution through a hybrid (direct and indirect) sales force in the U.S.**

We plan to commercialize AeroForm in the U.S. utilizing a direct group of sales and regional managers, along with a group of independent representatives. The direct team will be responsible for sales execution, team training and overall sales goal achievement and the indirect team will be compensated on a commission only basis. As a particular territory nears the targeted level of sales, we will consider inserting a direct representative to manage that particular maturing and developing territory. We expect this hybrid sales force will lower our cost of sales when compared to using a direct sales force exclusively.

In addition to breast reconstruction, saline-based tissue expanders have been used for a variety of other procedures for decades. When a patient experiences a severe burn or trauma based on injury or fracture, they often require a fresh layer of skin stretched over to cover the defect. The traditional saline-based tissue expansion devices used in this area come in shapes ranging from rectangular, crescent and round. Similarly, in children, there are multiple congenital defects that require the production of additional skin such as nevi, port stains and other skin based anomalies. Prototypes and models have been developed showing that our core technology can potentially be leveraged for other potential uses. Additional research and development, including clinical trials, regulatory submissions and sales and marketing strategies, would be required to pursue these potential opportunities.

Sole Product

Our sole product is the AeroForm Tissue Expander System. AeroForm is equipped with a remote dosage controller that activates an internal CO_2 gas reservoir in the temporary tissue expander implant. With the use of the remote control device, the patient is able to trigger the release of a small amount of gas to increase the volume of the implanted expander. This expansion process does not involve needles or injections, and enables the tissue expansion process to be undertaken in a short time frame and by the patient herself from wherever she chooses.

As the controlled release of the gas does not require the regular involvement of a surgeon or attendance at a clinic, the expansion of AeroForm can be achieved with a larger number of smaller expansions. The system is designed to allow a maximum number of three 10 millimeter (ml) expansions each day with a three-hour lockout between doses. By comparison, expansion with saline-based expanders typically involves administration of a 50ml to 100 ml volume of saline by a surgeon every one to three weeks. In addition to the greater convenience of AeroForm, expansion using a larger number of smaller expansion volumes results in a less painful experience for the patient, as she avoids expansion via delivery of a large amount of saline, which exerts pressure on the chest muscle, and surrounding area. In addition, patients achieve required expansion in approximately half the time (21 versus 46 days on average).

AeroForm components

The AeroForm comprises two components:

- The Tissue Expander; and
- The Dosage Controller.

The following table describes each of the components of the AeroForm.

AeroForm Components	**Description**
Tissue Expander (expander)	Implant that contains an outer silicone shell, inner gas barrier, reservoir of compressed CO_2 gas and a receiving antenna.
Dosage Controller (controller)	Device that includes batteries, a transmitting antenna and circuitry to initiate and provide power to the antennae (in the expander).

Results of our clinical trials to date

We have conducted clinical trials in Australia and the U.S., demonstrating the safety and efficacy of AeroForm.

Australia

The first clinical trial of AeroForm, or PACE 1 trial, was conducted in 2009 and 2010 in Perth, Australia. The trial involved ten AeroForm devices implanted in seven patients, which produced results that included:

- 100% treatment success (i.e. successful expansion leading to a breast implant exchange);
- no device related adverse events;
- average expansion time of 15 days; and
- 100% patient and surgeon satisfaction.

Following the success of the PACE 1 trial, we proceeded with the larger PACE 2 clinical trial in Perth, Australia involving 33 patients and the implant of 61 AeroForm devices. This trial was completed in 2012 and results included:

- 100% treatment success (i.e. successful expansion leading to a breast implant exchange);

- no device related adverse events;
- average expansion time of 17 days; and
- 98% patient and surgeon satisfaction.

The successful data of both trials enabled us to successfully apply for and obtain CE Mark and Therapeutic Goods Administration (TGA) approval for the European and Australian markets, respectively.

After we obtained CE Mark and TGA approval for AeroForm, we conducted a further clinical trial in Australia, known as the ASPIRE trial. This trial allowed for the broader inclusion criteria than the earlier studies and allowed for and successfully demonstrated the use of concurrent radiotherapy without incident. The ASPIRE trial involved the recruitment of 21 patients who had 34 devices implanted. Five patients had AeroForm implanted and two patients received concurrent radiotherapy without incident.

Key outcomes of the ASPIRE trial included:

- 94% treatment success (i.e. successful expansion leading to a breast implant exchange);
- average expansion time of 22.2 days; and
- 95% patient and surgeon satisfaction.

United States

In the U.S. we conducted a multicenter, prospective, randomized controlled pivotal trial under an investigational device exemption, or IDE. The XPAND trial, which commenced in 2012, enrolled 150 patients across 16 sites in the U.S. Final results of the XPAND trial were published in October 2016. Below is a brief summary of the XPAND trial protocol and results.

Patients were divided into two groups and randomized in a 2:1 ratio:

- AeroForm Expander Group — 98 patients received 168 AeroForm expanders. All AeroForm patients were provided with the usual standard of care for breast reconstruction from a surgeon but completed the expansion process using AeroForm.
- Saline-based Expander Group — 52 patients receive 89 traditional saline-based expanders. Like the AeroForm expander group, all patients were provided with the usual standard of care for breast reconstruction from a surgeon but completed the expansion process by regularly attending their surgeon's office to receive injections into the breast to fill the saline expander.

This trial was completed in 2016 and results included:

- 100% treatment success (i.e. successful expansion leading to a breast implant exchange);
- 7 device-related adverse events; and
- average expansion time of 21 days.

The device-related adverse events were as follows: (i) 2 were associated with carbon dioxide permeation and (ii) 5 were associated with an obstruction to the valve that controls the release of carbon dioxide. Both of these items were resolved through modifications to the product prior to the completion of the trial.

The results from the XPAND trial were submitted to the FDA in 2015 as part of our de novo submission, and served as the basis for the FDA's clearance of the AeroForm system in the U.S. in 2016.

Key benefits and advantages of AeroForm

The following table summarizes what we believe are the key benefits and advantages of the AeroForm compared to a traditional saline-filled expander.

	Traditional saline expanders	AeroForm
Average surgeon visits over expansion period	6-16	1 or 2
Average time required to complete expansion	50+ days	Approximately 3 weeks
Fill technique	Needle	Remote control
Fill venue	Surgeon's office	Home or work
Pain	High	Low
Patient controlled	No	Yes
Pre-determined anatomical shape	No	Yes

Information contained in this table is reflective of the results achieved during the PACE, ASPIRE and XPAND clinical trials (which are discussed above), and the post-approval and commercial experience in Australia since 2015.

The mechanism used in AeroForm is the same as traditional saline-based expanders, in that it stretches the skin and muscle tissues by increases in its volume. Over time, the skin and muscle tissues are sufficiently stretched to accommodate a breast implant. However, by using gradual release of compressed gas rather than less frequent injections of larger volumes of liquid saline, AeroForm provides some advantages over traditional saline expanders:

- for patients:
    - needle free filling;
    - reduced time to a permanent implant;
    - patient controlled dosing (at home or work versus surgeon office expansion); and
    - less schedule disruption due to fewer surgeon office visits being required;
- for surgeons:
    - faster expansion and earlier reconstruction than when using traditional saline devices;
    - Potential decrease in the number of post-operative visits to the surgeon's office;
    - Potential to increase office productivity; and
    - less use of disposables used to fill saline devices; and
- for the site of service:
    - potential to increase efficiencies; and
    - potential to reduce resource requirements.

An additional potential advantage is that the pre-formed shape of AeroForm when expanded is more representative of a true breast shape than the shape produced by traditional saline-based expanders. The shape cannot readily be deformed or compressed by the overlying muscle and therefore potentially maintains a pronounced and more natural shape. By comparison, traditional saline-based expanders are essentially silicon bags filled with saline and often distort or move when compressed by muscle (like a balloon filled with water). This can lead to discomfort during the expansion process and can result in a more deformed shape as it seeks the path of least resistance when saline is pushed into it. It is not uncommon for saline-based tissue expanders to expand up under the clavicle, the arm or towards the midline during the extended filling process.

Manufacturing

Our manufacturing operations comprise approximately 9,000 square feet of approximately 15,000 square feet of leased facilities in Palo Alto, CA. The facilities include a controlled environment assembly room and an engineering laboratory. We perform final assembly and packaging of our products, as well as all research and development in these facilities. We have an ISO compliant Quality Management System that has been certified to the ISO 13485:2003 medical device standard.

In April 2017, we signed a sublease for an additional approximately 24,000 square foot facility is San Jose, CA. We will begin the process of transferring key subassembly manufacturing to the new facility in the second half of 2017, principally the subassembly comprising the reservoir of compressed CO_2 gas, which we expect to continue to manufacture at our facilities in Palo Alto, CA, and San Jose, CA, in the near term. This transfer will be subject to internal qualification and validation procedures, as well as certain regulatory approvals. Once complete, we plan to sublease our current facilities in Palo Alto, CA.

In addition to the additional space in California, we plan to increase our manufacturing capacity to support our anticipated demand by engaging with a contract manufacturer in Costa Rica for high volume final assembly. With our planned increase to our U.S.-based staff, additional space in California to support continued manufacturing of the reservoir of compressed CO_2 gas, and additional equipment in California and Costa Rica, we expect that the use of a contract manufacturer should enable us to increase our manufacturing capacity. We have entered into a long-term contract with Vention Medical Costa Rica, S.A., or Vention, our contract manufacturer, in January 2017, and we anticipate completion of validation activities at their site in the third quarter of 2017. It is also our intention to have a second supplier for key components to reduce the potential risk of disruption to our business from reliance on any one supplier.

We currently outsource the manufacturing of certain AeroForm components and some subassemblies to qualified suppliers and perform the final assembly of AeroForm devices. During assembly, we send certain subassemblies to be sterilized by our approved sterilization suppliers. We package and label the final assembly before sending them for final sterilization by our approved sterilization partner. All of the critical suppliers and processes undergo monitoring and validation to control delivery and quality of the products. The California facility has limited production capacity of the final assembly, resulting in a relatively high per unit production cost at this facility.

Sales & Marketing

We commenced commercial sales of AeroForm in 2015 and are focused on executing our commercial strategy to become the standard of care for tissue expanders in breast reconstruction post mastectomy. To date, our sales and marketing activities has been limited in Australia, where a number of our early clinical trials were performed. Commencing in 2017, the majority of our sales and marketing effort will be focused on the U.S. Once sales are established in the U.S., we may extend our presence into Europe, where we have already obtained approval to market and sell AeroForm, and Asia, where we will need to obtain regulatory approvals.

Other key aspects of our sales and marketing strategy include close engagement and alignment with key opinion leaders in the fields of plastic surgery and breast reconstruction, and with key influencers and decision makers in patient advocacy groups.

Our current commercial activities

Following Australian reimbursement being granted in November 2014 (discussed below), we commenced an initial targeted launch of AeroForm in Australia in January 2015. Our initial focus has been on tissue expanders in the private health system, as they represent approximately 75% of tissue expanders purchased in Australia. We have an office in Australia that is responsible for developing and supporting our Australian sales and marketing activity.

Through 2016, our U.S. sales and marketing efforts have been centered on a range of preparatory activities to ensure that we are ready for a U.S. market release, including identifying and hiring the first tier of sales personnel; engaging in dialogue with targeted hospitals for initial adoption; and conducting early industry and patient awareness initiatives. In 2017, post FDA clearance, we initially are planning on concentrating on several key high volume academic and community hospitals that participated in our pivotal and continued access trials, as we broaden surgeon training and refine processes for seamless on-boarding with nursing, billing and inventory. After we received FDA de novo clearance for AeroForm in December 2016, we submitted a 510(k) application for a materials change related to enhanced film material. This 510(k) was cleared by the FDA in April 2017. With this approval, and the anticipated completion of the validation activities at our contract manufacturer as discussed above, we expect to launch a broader commercial release of AeroForm in the second half of 2017.

At the same time as driving adoption and sales at these already experienced hospitals, the initial direct sales team will be responsible for hiring, training and developing indirect sales representatives across the U.S. Direct and indirect sales efforts will be supported by concentrated information campaigns to be conducted by us through both traditional and social media.

Reimbursement for AeroForm

Australia

We secured Australian reimbursement for AeroForm in November 2014 by having both the AeroForm tissue expander and the dosage controller listed on the Prostheses List. The Prostheses List is the list of surgically implanted prostheses, human tissue items and other medical devices for which private health insurers must pay benefits for when they are provided to a patient with appropriate health insurance coverage as part of hospital treatment or hospital substitute treatment, and there is a Medicare benefit payable for the professional service. The Prostheses List covers all private health insurance plans in Australia.

U.S.

We believe we will benefit from existing reimbursement codes in the U.S. that provide broad reimbursement coverage for breast reconstruction procedures (including tools and devices used in those procedures, such as tissue expanders). In addition, due to the *Women's Health and Cancer Rights Act* of 1998 (U.S.) which federally mandates reimbursement of breast reconstruction procedures, private insurers that provide reimbursement for mastectomies (which we understand to be all major private insurers in the U.S.) are required to also provide reimbursement for procedures for breast reconstruction (inclusive of the use of tissue expanders such as AeroForm). The increasing U.S. policy focus on ensuring awareness of and access to breast reconstruction options for all breast cancer patients has ensured that public or private health systems broadly reimburse for tissue expansion, with the rates of reimbursement (reimbursement per procedure for surgeons and sites of service) increasing every year since 2010.

Rest of the World

Reimbursement is a lengthy country-by-country process. We will look to focus our reimbursement efforts to first obtain reimbursement in those countries where reimbursement is reasonably achievable in a timely manner and at rates that support profitable business operations.

Competition

We compete with large public pharmaceutical and medical device companies, such as Allergan, Inc. and Mentor Worldwide LLC, a division of Johnson & Johnson, which have been market leaders in the traditional saline-based tissue expander market for many years. Our competitors have greater brand recognition and longer histories in these markets. Furthermore, the resources and scale of these two dominant players in the tissue expander market provides them with advantages in terms of financing, research and development, manufacturing and marketing resources than are currently available to us. Additionally, these companies offer their customers access to a suite of products, including breast implants, which may allow them to offer favorable pricing on volume purchases or bundled purchases.

Intellectual Property

We protect key areas of invention for our products and technology through a combination of patents, copyright, trade secrets, trademark law and confidentiality agreements. We actively seek to file patent applications on our products and technology and as warranted by research and development activities. We also regularly monitor third party patents and applications of interest on an ongoing basis and analyze their relevance to us and our products.

We have sought patent protection of our technology in many of the countries and industries that are currently identified as target markets. As of December 31, 2016, our patent portfolio consisted of four issued and three pending U.S. patents, and 26 issued and 12 pending foreign patents. Our issued foreign patents include patents granted in Australia, Hong Kong, Japan and several of the major countries in the European Union. We will continue to seek intellectual property protection in as well as outside of the U.S.

Our patent portfolio includes patent and pending patent applications owned by Shalon Ventures and exclusively licensed by us, patents and a pending patent application co-owned by us and Shalon Ventures, as well as patent applications developed by and solely owned by us. We pay 3% royalties of net sales of the licensed inventions to Shalon Ventures with respect to the licensed patents and patent applications under an exclusive license entered into with Shalon Ventures on March 9, 2005, amended on March 9, 2009, January 9, 2012, and January 15, 2014, collectively referred to as the License Agreement. The License Agreement grants us certain exclusive rights in all human uses of self-expanding tissue expanders under certain patents and patent application owned or co-owned by Shalon Ventures. The License Agreement also gives us the first right to prosecute the licensed intellectual property. Our current U.S. issued patents expire between 2025 and 2035 and our current issued foreign patents expire between 2025 and 2030.

We protect our AIRXPANDERS, AIRXPANDER (in Australia) and AEROFORM trademarks by maintaining the registration of those marks for use in connection with surgical implants in Australia, the U.S., the European Union, Canada and Japan.

Our intellectual property is directed to technology incorporated into the AeroForm breast tissue expansion system, including its method of use. The term of a patent is limited, typically to 20 years from the date the application was filed or from the earliest non-provisional priority date in the applicable country. We employ external patent attorneys to assist us in managing our intellectual property portfolio.

Government Regulation of Medical Devices and of AeroForm

Governmental authorities in the United States, at the federal, state and local levels, and other countries extensively regulate, among other things, the research, development, testing, manufacture, labeling, promotion, advertising, distribution, marketing and

export and import of products such as those we are commercializing and developing. Failure to obtain approval or clearance to market our products and products under development and to meet the ongoing requirements of these regulatory authorities could prevent us from continuing to market or develop our products and product candidates.

United States

Premarketing Regulation

In the United States, medical devices are regulated by the FDA. Unless an exemption applies, a new medical device will require either prior 510(k) clearance or approval of a premarket approval application, or PMA, before it can be marketed in the United States. The information that must be submitted to the FDA in order to obtain clearance or approval to market a new medical device varies depending on how the medical device is classified by the FDA. Medical devices are classified into one of three classes on the basis of the controls deemed by the FDA to be necessary to reasonably ensure their safety and effectiveness. Class I devices, which are those that have the lowest level or risk associated with them, are subject to general controls, including labeling, premarket notification and adherence to the quality system regulation, or QSR, which sets forth device-specific good manufacturing practices. Class II devices are subject to general controls and special controls, including performance standards. Class III devices, which have the highest level of risk associated with them, are subject to most of the previously identified requirements as well as to premarket approval. Most Class I devices and some Class II devices are exempt from the 510(k) requirement, although the manufacturers will still be subject to registration, listing, labeling and QSR requirements.

A 510(k) premarket notification must demonstrate that the device in question is substantially equivalent to another legally marketed device, or predicate device, that did not require premarket approval. In evaluating the 510(k), the FDA will determine whether the device has the same intended use as the predicate device, and (a) has the same technological characteristics as the predicate device, or (b) has different technological characteristics, and (i) the data supporting the substantial equivalence contains information, including appropriate clinical or scientific data, if deemed necessary by the FDA, that demonstrates that the device is as safe and as effective as a legally marketed device, and (ii) does not raise different questions of safety and effectiveness than the predicate device. Most 510(k)s do not require clinical data for clearance, but the FDA may request such data. The FDA's goal is to review and act on each 510(k) within 90 days of submission, but it may take longer based on requests for additional information. In addition, requests for additional data, including clinical data, will increase the time necessary to review the notice. If the FDA does not agree that the new device is substantially equivalent to the predicate device, the new device will be classified in Class III, and the manufacturer must submit a PMA. Since July 2012, however, with the enactment of the Food and Drug Administration Safety and Innovation Act, or FDASIA, a de novo pathway is directly available for certain low to moderate risk devices that do not qualify for the 510(k) pathway due to lack of a predicate device. Modifications to a 510(k)-cleared medical device may require the submission of another 510(k) or a PMA if the changes could significantly affect the safety or effectiveness or constitute a major change in the intended use of the device.

AeroForm, as a Class II medical device, was granted its FDA de novo marketing authorization in December 2016.

The PMA process is more complex, costly and time consuming than the 510(k) clearance procedure. A PMA must be supported by extensive data including, but not limited to, technical, preclinical, clinical, manufacturing, control and labeling information to demonstrate to the FDA's satisfaction the safety and effectiveness of the device for its intended use. After a PMA is submitted, the FDA has 45 days to determine whether it is sufficiently complete to permit a substantive review. If the PMA is complete, the FDA will file the PMA. The FDA is subject to performance goal review times for PMAs and may issue a decision letter as a first action on a PMA within 180 days of filing, but if it has questions, it will likely issue a first major deficiency letter within 150 days of filing. It may also refer the PMA to an FDA advisory committee for additional review, and will conduct a preapproval inspection of the manufacturing facility to ensure compliance with the QSR, either of which could extend the 180-day response target. A PMA can take several years to complete and there is no assurance that any submitted PMA will ever be approved. Even when approved, the FDA may limit the indication for which the medical device may be marketed or to whom it may be sold. In addition, the FDA may request additional information or request the performance of additional clinical trials before it will reconsider the approval of the PMA or as a condition of approval, in which case the trials must be completed after the PMA is approved. Changes to the device, including changes to its manufacturing process, may require the approval of a supplemental PMA.

If a medical device is determined to present a "significant risk," the manufacturer may not begin a clinical trial until it submits an investigational device exemption, or IDE, to the FDA and obtains approval of the IDE from the FDA. The IDE must be supported by appropriate data, such as animal and laboratory testing results and include a proposed clinical protocol. These clinical trials are also subject to the review, approval and oversight of an institutional review board, or IRB, at each institution at which the clinical trial will be performed. The clinical trials must be conducted in accordance with applicable regulations, including but not limited to the FDA's IDE regulations and current good clinical practices. A clinical trial may be suspended by the FDA or the sponsor at any time for various reasons, including a belief that the risks to the study participants outweigh the benefits of participation in the trial. Even if a clinical trial is completed, the results may not demonstrate the safety and efficacy of a device, or may be equivocal or otherwise not be sufficient to obtain approval.

Post-Marketing Regulation

After a device is placed on the market, numerous regulatory requirements apply. These include:

- compliance with the QSR, which require manufacturers to follow stringent design, testing, control, documentation, record maintenance, including maintenance of complaint and related investigation files, and other quality assurance controls during the manufacturing process;
- labeling regulations, which prohibit the promotion of products for uncleared or unapproved or "off-label" uses and impose other restrictions on labeling;

- other post-marketing regulation of promotional activities, including standards and regulations for direct-to-consumer advertising, industry-sponsored scientific and educational activities, and promotional activities involving the internet and social media; and
- medical device reporting obligations, which require that manufacturers investigate and report to the FDA adverse events, including deaths, or serious injuries that may have been or were caused by a medical device and malfunctions in the device that would likely cause or contribute to a death or serious injury if it were to recur.

Failure to comply with applicable regulatory requirements can result in enforcement action by the FDA, which may include any of the following sanctions:

- warning letters;
- fines, injunctions, and civil penalties;
- recall or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- refusal to grant 510(k) clearance or PMA approvals of new products;
- withdrawal of 510(k) clearance or PMA approvals; and
- criminal prosecution.

To ensure compliance with regulatory requirements, medical device manufacturers are subject to market surveillance and periodic, pre-scheduled and unannounced inspections by the FDA, and these inspections may include the manufacturing facilities of our third-party contract manufacturer and subcontractors.

International Regulation

International sales of medical devices are subject to foreign government regulations, which vary substantially from country to country. The time required to obtain approval by a foreign country may be longer or shorter than that required for FDA approval, and the requirements may differ. For example, the primary regulatory authority with respect to medical devices in Europe is that of the European Union. The European Union consists of 28 countries and has a total population of over 500 million people. Norway, Iceland, Lichtenstein and Switzerland are not members of the European Union, but have transposed applicable European medical device laws into their national legislation. Thus, a device that is marketed in the European Union may also be recognized and accepted in those four non-member European countries as well.

The European Union has adopted numerous directives and standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices. Devices that comply with the requirements of relevant directives will be entitled to bear CE conformity marking, indicating that the device conforms to the essential requirements of the applicable directives and, accordingly, can be commercially distributed throughout the European Union. Actual implementation of these directives, however, may vary on a country-by-country basis. The CE Mark is a mandatory conformity mark on medical devices distributed and sold in the European Union and certifies that a medical device has met applicable requirements.

The method of assessing conformity varies, but normally involves a combination of self-assessment by the manufacturer and a third-party assessment by a “Notified Body.” Notified Bodies are independent testing houses, laboratories, or product certifiers authorized by the E.U. member states to perform the required conformity assessment tasks, such as quality system audits and device compliance testing. An assessment by a Notified Body based within the European Union is required in order for a manufacturer to distribute the product commercially throughout the European Union. Medium and higher risk devices require the intervention of a Notified Body which will be responsible for auditing the manufacturer’s quality system. The Notified Body will also determine whether or not the product conforms to the requirements of the applicable directives. Devices that meet the applicable requirements of E.U. law and have undergone the appropriate conformity assessment routes will be granted CE “certification.”

The AeroForm has CE Mark designation for tissue expansion for patients undergoing tissue expansion. CE Marking requires demonstration of continued compliance with the directives, which apply to the continued safety and quality of the product. Our designated EU Notified Body regularly audits these parameters to ensure compliance with ISO 13485 certification.

The CE Mark is mandatory for medical devices sold not only within the countries of the European Union but more generally within all countries in Western Europe. As many of the European standards are converging with international standards, the CE Mark is often used on medical devices manufactured and sold outside of Europe (notably in Asia that exports many manufactured products to Europe). CE Marking gives companies easier access into not only the European market but also to Asian and Latin American markets,

most of which recognize the CE Mark on medical devices as a mark of quality and adhering to international standards of consumer safety, health or environmental requirements.

In September 2012, the European Commission adopted a proposal for a regulation which, if adopted, will change the way most medical devices are regulated in the European Union, and may subject our products to additional requirements.

In a number of international markets, including Australia, regulatory approvals may be expedited once CE Mark approval has been received; although submissions are required in each country.

In Australia, the TGA is responsible for administering the Therapeutic Goods Act with AeroForm falling under the category of an active implantable medical device. In 2013, the TGA approved the AeroForm for inclusion on the Australian Register of Therapeutic Goods.

Health Care Regulatory Laws

In the United States, the research, manufacturing, distribution, marketing, sale and promotion of medical devices are subject to numerous regulations by various federal, state and local governmental authorities in addition to the FDA. Health care fraud and abuse laws and other regulatory laws and regulations that govern our business include the following:

- The federal anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any good, facility, item or service reimbursable under a federal health care program, such as Medicare or Medicaid. This statute has been interpreted broadly to apply to arrangements between pharmaceutical manufacturers and prescribers, purchasers, and formulary managers, among others. There are statutory exceptions and regulatory safe harbors available to protect certain common activities from prosecution or other regulatory sanctions that must be strictly followed. Failure to meet all of the requirements of a particular statutory exception or regulatory safe harbor does not make the conduct per se illegal under the anti-kickback statute, but subjects the arrangement to a case-by-case basis review of its facts and circumstances. The Affordable Care Act amended the federal anti-kickback statute such that a person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation and codified case law 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 federal False Claims Act.
- Federal false claims laws, including the civil False Claims Act, false statement laws and civil monetary penalty laws prohibit, among other things, any person or entity from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to have a false claim paid. The False Claims Act contains qui tam provisions, which allow a private individual, or relator, to bring a civil action on behalf of the federal government alleging that the defendant submitted a false claim to the federal government and to share in any monetary recovery. Certain marketing practices, including off-label promotion, may violate federal false claims laws.
- The federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, created new federal criminal statutes that prohibit among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any health care benefit program, including private third-party payers, and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for health care benefits, items or services. Like the federal anti-kickback statute, the Affordable Care Act amended the intent standard for certain health care fraud provisions under HIPAA such that a person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and their respective implementing regulations, imposes specified requirements relating to the privacy, security and transmission of individually identifiable health information.
- The federal Physician Payments Sunshine Act and its implementing regulations require that certain manufacturers of drugs, devices, biologicals and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to annually report to the Centers for Medicare & Medicaid Services (CMS) information related to certain payments or other transfers of value made to physicians and teaching hospitals, and to report annually certain ownership and investment interests held by physicians and their immediate family members.
- The U.S. Foreign Corrupt Practices Act, the U.K Anti-Bribery Act, and similar anti-bribery laws that generally prohibit companies and their intermediaries from making improper payments to officials for the purpose of obtaining or retaining business.
- Analogous local, state and foreign laws, such as state anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving health care items or services reimbursed by non-governmental third-party payors, including private insurers; state laws that require medical device companies to comply with the device industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to health care providers and entities; state and foreign laws that require device manufacturers to report information related to payments and other transfers of value to health care professionals or entities; and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable health care laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other health care laws.

Medical device and other health care companies have been prosecuted under these laws for a variety of promotional and marketing activities, such as providing free trips, free goods, sham consulting fees and grants and other monetary benefits to prescribers; and engaging in off-label promotion. If our operations are found to be in violation of any of the health regulatory laws described above or any other laws that apply to us, we may be subject to significant sanctions, including criminal fines, civil monetary penalties,

administrative penalties, disgorgement, individual imprisonment, exclusion from participation in federal health care programs, integrity obligations, contractual damages, injunctions, recall or seizure of products, total or partial suspension of production, 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 results of operations.

Health Care Reform

In the United States and foreign jurisdictions, there have been a number of legislative and regulatory changes to the health care system that could affect our future results of operations. In particular, there have been and continue to be a number of initiatives at the U.S. federal and state levels that seek to reduce health care costs. In March 2010, President Barack Obama signed into law the Affordable Care Act, or ACA, a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of health care spending, enhance remedies against health care fraud and abuse, add new transparency requirements for health care and health insurance industries, impose new taxes and fees on pharmaceutical and medical device manufacturers and impose additional health policy reforms. Substantial new provisions affecting compliance also were enacted, which may affect our business practices with health care practitioners.

Some of the provisions of the ACA have yet to be implemented, and there have been judicial and Congressional challenges to certain aspects of the ACA. In addition, the current Trump administration and Congress may continue to seek legislative and regulatory changes, including repeal and replacement of certain provisions of the ACA. President Trump also signed an Executive Order in January 2017 directing federal agencies with authorities and responsibilities under the ACA to waive, defer, grant exemptions from, or delay the implementation of any provision of the ACA that would impose a fiscal or regulatory burden on states, individuals, health care providers, health insurers, or manufacturers of pharmaceuticals or medical devices.

We expect that health care reform measures that have been and may be adopted in the future, may result in more rigorous coverage criteria and in additional downward pressure on the price that we receive for our products. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payers. The implementation of cost containment measures or other health care reforms may affect our ability to generate revenue and profits or commercialize our product candidates.

Third-Party Coverage and Reimbursement

Because we typically receive payment directly from hospitals and health care facilities, we do not anticipate relying directly on payment for any of our products from third-party payers, such as Medicare, Medicaid, private insurers, and managed care companies. However, our business will be affected by policies administered by federal and state health care programs, such as Medicare and Medicaid, as well as private third-party payers, which often follow the policies of the state and federal health care programs. For example, our business will be indirectly impacted by the ability of a hospital or medical facility to obtain coverage and third-party reimbursement for procedures performed using our products. These third-party payers may deny reimbursement if they determine that a device used in a procedure was not medically necessary; was not used in accordance with cost-effective treatment methods, as determined by the third-party payer; or was used for an unapproved use. A national or local coverage decision denying Medicare coverage for one or more of our products could result in private insurers and other third party payers also denying coverage. Even if favorable coverage and reimbursement status is attained for our products, less favorable coverage policies and reimbursement rates may be implemented in the future. The cost containment measures that third-party payers and providers are instituting, both within the United States and abroad, could significantly reduce our potential revenues from the sale of our products and any product candidates. We cannot provide any assurances that we will be able to obtain and maintain third party coverage or adequate reimbursement for our products and product candidates in whole or in part.

For inpatient and outpatient procedures, including those that will involve use of our products, Medicare and many other third-party payers in the United States reimburse hospitals at a prospectively determined amount, generally based on one or more diagnosis related groups, or DRGs, associated with the patient's condition for inpatient treatment and generally based on ambulatory payment classifications, or APCs, associated with the procedures performed during the patient's stay, for outpatient treatment. Each DRG or APC is associated with a level of payment and may be adjusted from time to time, usually annually. Prospective payments are intended to cover most of the non-physician hospital costs incurred in connection with the applicable diagnosis and related procedures. However, the prospective payment amounts are typically set independent of a particular hospital's actual costs associated with treating a particular patient and implanting a device. Therefore, the payment that a hospital would receive for a particular hospital visit would not typically take into account the cost of our products.

In international markets, health care payment systems vary by country and many countries have instituted price ceilings on specific product lines. There can be no assurance that our products will be considered cost-effective by third-party payers, that

reimbursement will be available or, if available, that the third-party payers' reimbursement policies will not adversely affect our ability to sell our products profitably.

Member countries of the European Union offer various combinations of centrally financed health care systems and private health insurance systems. The relative importance of government and private systems varies from country to country. Governments may influence the price of medical devices through their pricing and reimbursement rules and control of national health care systems that fund a large part of the cost of those products to consumers. Some jurisdictions operate positive and negative list systems under which products may be marketed only once a reimbursement price has been agreed upon. Some of these countries may require, as condition

of obtaining reimbursement or pricing approval, the completion of clinical trials that compare the cost-effectiveness of a particular product candidate to currently available therapies. Some E.U. member states allow companies to fix their own prices for devices, but monitor and control company profits. The choice of devices is subject to constraints imposed by the availability of funds within the purchasing institution. Medical devices are most commonly sold to hospitals or health care facilities at a price set by negotiation between the buyer and the seller. A contract to purchase products may result from an individual initiative or as a result of a competitive bidding process. In either case, the purchaser pays the supplier, and payment terms vary widely throughout the European Union. Failure to obtain favorable negotiated prices with hospitals or health care facilities could adversely affect sales of our products.

Material Contracts

We currently acquire certain materials and components required to manufacture our products from third parties and outsource certain aspects of our manufacturing process in addition to the warehousing and logistics arrangements that we have in Australia. Although alternative suppliers are available, we have identified the following agreement, which we consider to be material to our business as currently conducted. The key provisions of this material contract are summarized below, however, the summary is not intended to be exhaustive.

Vention — Contract Manufacturing Agreement

In January 2017, we entered into a Manufacturing and Supply Agreement with Vention Medical Costa Rica, S.A, or Vention, pursuant to which Vention agreed to manufacture and supply our AeroForm product. There are no specified minimum purchase quantities; however, we are required to provide, on a monthly basis, a twelve month demand forecast with the first three months considered binding and the remaining amount considered non-binding.

The agreement continues for four years unless terminated earlier. The term of the agreement automatically renews for additional one-year terms unless one party provides the other party with written notice of termination at least six months prior to the end of the applicable renewal period. The agreement may be terminated by either party for any reason upon 365 days' written notice. In addition, the agreement may be terminated by mutual agreement of the parties, or by either party, with written notice, upon uncured material breach or insolvency of the other party.

Shalon Ventures — Royalty Agreement

Shalon Ventures and AirXpanders have entered into a License Agreement dated March 9, 2005 (as amended on March 9, 2009, January 9, 2012 and January 15, 2014) in relation to those inventions, collectively the Shalon Ventures License Agreement. Pursuant to the Shalon Ventures License Agreement, Shalon Ventures granted AirXpanders an exclusive license to develop, make, have made, use, offer for sale, sell, have sold, import and export products that, but for the license, would infringe one or more claims of the patents. The license covers all human uses of self-expanding tissue expanders anywhere in the world and includes the right to sublicense.

In consideration for the license, AirXpanders pays Shalon Ventures a running royalty of 3% of net sales of the licensed invention. AirXpanders indemnifies Shalon Ventures for any liability arising out of the commercialization of products using the license. Through the year ended December 31, 2016, the Company has incurred $19,266 in royalty fees.

Financing & Dividends

Financing

Since our incorporation on March 17, 2005 through February 28, 2017, we have been funded with a total of approximately $108.8 million through a series of equity and convertible note financings.

We have raised approximately $78.4 million through public sales of our equity in our IPO, and a concurrent private placement under Regulation D of the Securities Act (Concurrent Placement), and through subsequent sales of our equity. This primarily consists of approximately $30.1 million raised in June 2015 in the IPO, Concurrent Placement and the issuance of convertible bridge notes, $14.2 million raised in June 2016 in an equity offering of our CDIs; and $34.1 million raised in February 2017 in an equity offering of our CDIs. Apart from the Concurrent Placement, these equity offerings were not made to U.S. persons (within the meaning of the Securities Act).

Prior to the IPO, from 2005 through 2014, we had raised approximately $30.4 million through the sale of Series A, B, B-1, C, D and E convertible preferred stock during the period, and borrowed approximately $3.5 million from a financial institution. In connection with the IPO, all of our existing shares of preferred stock were converted into Common Stock. In February and June 2015, we raised through a private placement of convertible bridge notes payable a total of $5.0 million in net cash proceeds. The convertible bridge

notes had a stated interest rate of 7% per annum. All the outstanding convertible bridge notes payable and accrued unpaid interest of $70,233 were converted into 4,412,474 shares of Common Stock in connection with our IPO in June 2015.

On June 22, 2015, we issued 29,629,654 shares of Common Stock in connection with an initial public offering (IPO) on the Australian Securities Exchange, or the ASX, a Concurrent Placement, and the conversion of convertible bridge notes payable and related accrued interest. We raised a total of approximately $30.1 million, net of issuance costs of approximately $2.9 million. Of this amount, $25.1 million were net cash proceeds directly from the IPO, and $5.0 million were cash proceeds from the Concurrent Placement. In connection with the IPO, all of our existing shares of preferred stock were converted into common stock.

In June 2016, we issued 8,771,930 shares of Common Stock in connection with an equity offering on the ASX. Our cash proceeds were approximately $14.2 million, net of issuance costs of approximately $0.7 million.

In February 2017, we issued 16,304,348 shares of Common Stock in connection with an equity offering on the ASX. We raised a total of $34.1 million, net of issuance costs of approximately $1.5 million.

Dividends

During 2016, 2015 and 2014, we did not declare or pay any dividends on our common stock and do not currently anticipate declaring or paying dividends on our common stock in the foreseeable future. We currently intend to retain all of our future earnings, if any, to finance the operation and expansion of the business. Any future determination relating to our dividend policy will be made at the discretion of our Board of Directors, or the Board, and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects, contractual restrictions and covenants and other factors that the Board may deem relevant.

Research and development

Our primary product is the AeroForm breast tissue expansion system, which includes an externally-controlled breast tissue expander that, when inflated, stretches breast tissue in order to accommodate a subsequently positioned permanent breast implant. We have developed and continue to develop technologies for remotely-controlled tissue expansion such as breast tissue expansion. Research and development expenses were $7.2 million in 2016, $4.8 million in 2015 and $4.1 million in 2014.

Employees

As of December 31, 2016, we had 71 full-time employees including 12 in research and development, 40 in operations and 19 in selling, general and administrative. As of December 31, 2016, we had 64 employees located in the U.S. and 7 in Australia. None of our employees are represented by a labor union or covered by a collective bargaining agreement. We consider our relations with our employees to be good.

ITEM 1A. RISK FACTORS.

An investment in us is speculative and involves a number of risks. We believe the risks described below are the material risks that we face. However, the risks described below may not be the only risks that we face. Additional unknown risks or risks that we currently consider immaterial, may also impair our business operations. If any of the events or circumstances described below actually occurs, our business, financial condition or results of operations could suffer, and the trading price of our CDIs could decline significantly. You should carefully consider the specific risk factors discussed below, together with the cautionary statements under the caption "Forward-Looking Statements" and the other information and documents that we file from time to time with the SEC.

Risks Related to Our Business

We will need substantial additional funding and may be unable to raise capital when needed, which could force us to delay, reduce, or eliminate planned activities or may result in our inability to operate as a going concern.

As we have limited commercialization of our product, we are generating a small amount of revenue and are not cash flow positive or profitable. Our net revenue from sales of AeroForm was approximately $0.6 million for the year ended December 31, 2016 and, as of December 31, 2016, we had cash and cash equivalents of approximately $11.5 million. Our existing capital, which since February 2017 includes $32.6 million in net cash proceeds raised from an equity offering on the ASX, may be insufficient to meet our requirements. These requirements include, but not limited to, funding our initial and full commercial launch of AeroForm in the U.S., building our supporting manufacturing infrastructure, building a dependable partnership with our contract manufacturer, building our salesforce to support our commercialization efforts, conducting clinical trials, obtaining regulatory approvals, and covering any losses. We will need to raise additional funds through financings or borrowings prior to the middle of 2018 in order to accomplish our planned objectives. Failure to raise additional funds could delay, reduce, or halt our commercialization and clinical trial efforts and would impact our ability to continue as a going concern.

We have no committed sources of capital funding and there is no assurance that additional funding will be available to us in the future or be secured on acceptable terms. These factors raise substantial doubt about our ability to continue as a going concern. If adequate funding is not available, we may no longer be a going concern and may be forced to curtail operations, including our commercial activities and research and development programs, or cease operations altogether, file for bankruptcy, or undertake any combination of the foregoing. In such event, our stockholders may lose their entire investment in our company.

In addition, if we do not meet our payment obligations to third parties as they become due, we may be subject to litigation claims and our creditworthiness would be adversely affected. Even if we are successful in defending against these claims, litigation could result in substantial costs and would be a distraction to management, and may have other unfavorable results that could further adversely impact our financial condition.

We have a history of net losses and we may never achieve or maintain profitability.

We are a U.S. based medical device company with a limited history of operations and have limited commercial experience with our product. Medical device product development is a speculative undertaking and involves a substantial degree of risk. To date, we have focused on developing our sole product, AeroForm, and currently have no other products in development. We have incurred net losses since our inception, including net losses of approximately $19.4 million in 2016, $11.2 million in 2015 and $7.0 million in 2014. As of December 31, 2016, our accumulated deficit was approximately $66.3 million. Although we have started to generate revenues from sales in Australia and are beginning commercialization activities in the U.S., we expect to continue to incur significant operating losses for the near future as we incur costs, including those associated with commercializing our products, building our

supporting manufacturing infrastructure, building a dependable partnership with our contract manufacturer, conducting ongoing clinical trials that the FDA may require to ensure that our product is maintaining compliance, attempting to secure regulatory approvals for our products in Europe and Asia as well as the increased costs associated with being a public company in the U.S. with equity securities listed on the ASX.

Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. Our failure to achieve sustained profitability would depress the value of our company and could impair our ability to raise capital, expand our business, diversify our research and development pipeline, market AeroForm or any other products we may identify and pursue, if approved, or continue our operations. Our prior losses, combined with expected future losses, have had and will continue to have an adverse effect on our stockholders' equity and working capital. We cannot predict the extent of our future operating losses and accumulated deficit and we may never generate sufficient revenues to achieve or sustain profitability.

Our business model will depend solely on the success of AeroForm for breast reconstruction procedures.

We expect to derive all of our revenue in the foreseeable future from sales of AeroForm for breast reconstruction procedures. We have no other commercial products or products in active development at this time. Acceptance of our product in the marketplace is uncertain, and our failure to achieve sufficient market acceptance will significantly limit our ability to generate revenue and be profitable. If we are unable to successfully launch and achieve meaningful market penetration with AeroForm, our commercial strategy will be unattainable and our business operations, financial results and growth prospects will be materially and adversely affected.

Our business is dependent on future clinical trials that may be required for commercialization of Aeroform in other markets.

To date, we have conducted clinical trials in Australia and the U.S. demonstrating the safety, efficacy and convenience of AeroForm for sales in the Australian and U.S. markets. However, the success of these earlier clinical trials may not necessarily be predictive of the results of future clinical trials, which may be required for commercialization in other markets, like Europe and Asia, or for future products which may require additional clinical trials prior to approval.

Trial results can also be susceptible to varying interpretations and analyses. Although we consider that the data on AeroForm to date (including the preliminary data from the XPAND trial) demonstrates AeroForm's safety and effectiveness, there is no assurance that the device will meet its endpoints in future clinical trials. This would limit the size of the market opportunity for AeroForm in other markets.

If we undertake additional clinical trials for AeroForm in the future, those trials may be impacted by a number of factors including failure to recruit a sufficient number of patients, failure to meet trial endpoints, lack of product effectiveness during the trial, safety issues and modifications to trial protocols or changes to regulatory requirements for trials. Clinical trials may also be delayed, suspended or terminated due to decisions by the institutional review board (IRB) responsible for overseeing the study at a particular site.

We are dependent on the acceptance, promotion and safe usage of AeroForm by surgeons and their patients.

Regulatory approval and clearance of AeroForm, including in Australia and the U.S., will not guarantee market adoption. In order to achieve commercial success, we are dependent on the acceptance and promotion of AeroForm by patients and surgeons. Reasons that patients and surgeons may be slow to adopt AeroForm include, but are not limited to:

- preference of the products of competitors due to familiarity with those products or for various other reasons;
- limited clinical data illustrating the benefits of AeroForm to patients and surgeons;
- concern over potential liability risks involved in using a new product; and
- any delay in the qualification of AeroForm for reimbursement from relevant health care funding bodies in jurisdictions where approved reimbursement codes and reimbursement status for similar products does not already exist.

While we already have early good relationships with a number of leading surgeons in Australia and the U.S., this in and of itself does not ensure the widespread support of AeroForm among surgeons. If a significant number of surgeons in our key markets do not adopt or recommend AeroForm, or continue to promote and use the products of competitors, this would adversely impact or delay our ability to generate revenue and achieve profitability.

We may be unable to compete successfully with current tissue expanders in the market for breast reconstruction.

The market for traditional tissue expander products in breast reconstruction procedures is well established and dominated by two large pharmaceutical companies, Allergan, Inc. and Mentor Worldwide LLC, a division of Johnson & Johnson, which have been market leaders for a number of years. Our AeroForm will compete against the traditional saline expanders which have been used for many years, are supported by clinical data, and have significantly greater brand recognition. Furthermore, the resources and scale of the two dominant players in the tissue expander market provides them with significant advantages in terms of financing, research and development, manufacturing and marketing resources and this may restrict out ability to secure market share for AeroForm.

We have limited sales, marketing and distribution resources.

We currently have limited marketing resources and will need to commit significant resources to developing sales, distribution and marketing capabilities. We intend to utilize a hybrid sale distribution model in the U.S. but most other markets will likely entail the use of a distributor. We will need to ensure compliance with all legal and regulatory requirements for sales, marketing and distribution in each relevant market. There is a risk that we will be unable to develop sufficient sales, marketing and distribution capacity to effectively commercialize AeroForm.

We rely on key suppliers for product components.

Our contracts with key suppliers are generally standard in nature, in the form of purchase order arrangements that are common to medical device firms in the early stages of commercialization, with no minimum orders required. As we move further into our commercialization phase, we will increasingly rely on key suppliers for AeroForm components. A disruption at a key supplier could cause a substantial delay in the availability of AeroForm, leading to a potential loss of sales. Development of key manufacturing processes along with process validation testing, device verification testing, and regulatory approvals required for a manufacturing change could take up to six months to complete. However, we believe that alternative suppliers could ultimately be located, qualified and approved for all critical system components with the six month timeframe.

We intend to rely on a third party in Costa Rica to manufacture AeroForm.

We intend to have the main manufacturing of AeroForm managed by a contract manufacturer located in Costa Rica. While we also plan to retain the ability to manufacture AeroForm at our California location, there are inherent risks in relying on outsourced contract manufacturers particularly where the contract manufacturer is located outside of the U.S. These risks include risks of economic change, recession, labor strikes or disruptions, political turmoil, changes in tariffs or trade barriers, and lack of contract enforceability.

Should the manufacturer's operations be disrupted for any reason or production halted, we may not be able to have enough AeroForm devices manufactured in a timely manner to satisfy product demand. While an alternative manufacturer could be appointed, it would take a significant amount of time to transfer the manufacturing process, which would include installation and validation of equipment, process and product qualifications and regulatory approvals. If such a disruption were to occur, it would adversely impact our ability to sell AeroForm and customers might instead purchase competing tissue expander products. There may also be an ongoing sales impact in the form of a reduction of goodwill as a result of our inability to supply hospitals and surgeons in a timely manner.

We intend to rely on an automated manufacturing process to increase production volumes of AeroForm.

AeroForm has not yet been produced on a large scale. We have developed an automation process for the production of AeroForm which should significantly reduce the time required to produce each unit and allow for AeroForm to be produced in much greater volumes at a lower cost. This process has not been validated yet. It is intended that the automation process will be validated in the California location and then implemented by our contract manufacturer in Costa Rica, meaning that we will only have limited control over the process. The implementation of the automation process by the manufacturer may encounter some unforeseen problems or production delays beyond our control. If we are unable to keep up with demand for AeroForm, our revenues could be impaired and market acceptance of AeroForm may be adversely affected. In particular, should the manufacturer's operations be disrupted for any reason or production halted, we may not be able to have enough AeroForm devices manufactured in a timely manner to satisfy product demand.

Furthermore, if the automated manufacturing process is unsuccessful, this may adversely impact the gross margins that we believe we can achieve for AeroForm, which in turn will negatively affect our financial results.

Third party payers, including government authorities and private health insurers, may not provide sufficient levels of reimbursement or any form of reimbursement for AeroForm.

Purchasers of tissue expanders for breast reconstruction procedures generally rely on third party payers, particularly government health administration authorities, including Medicare and Medicaid in the U.S., and private health insurers, to subsidize the cost of the products. We have to date secured reimbursement for AeroForm in Australia and expect that AeroForm will benefit from existing reimbursement codes for breast reconstruction procedures in the U.S. Although rates of reimbursement for breast reconstruction procedures in the U.S. have been increasing in recent years, reimbursement rates are lower than our cost to produce AeroForm, and no assurance can be given that reimbursement amounts will continue to increase or that the amounts will be sufficient to enable us to sell AeroForm on a profitable basis in the U.S. Moreover, we cannot predict what changes may be made in the future to third party coverage and reimbursement in Australia or the U.S. and what impact any such changes may have on our ability to sell AeroForm.

Reimbursement and healthcare payment systems in international markets vary significantly by country. Outside Australia and the U.S., we may not obtain international coverage and reimbursement approvals in a timely manner or at all.

In Australia, the report of the Competition Policy Review released on March 31, 2015 (commonly known as the Harper Report) stated that the regulation of prostheses should be further examined to see if pricing and supply can be made more competitive. However, it is not known whether any further review of prostheses regulation will occur and if it does occur, how resulting regulatory changes, if any, will affect the future reimbursement of AeroForm in Australia.

We may not be able to pass through the regulatory hurdles and gain the necessary approvals and clearances to sell AeroForm in certain other countries.

In the U.S., we received de novo clearance from the FDA, allowing us to commence sales to the U.S. market. We have received TGA and CE Mark approval for AeroForm, allowing us to commence sales to the Australian and European markets, respectively.

In other jurisdictions, AeroForm is still at various pre-commercialization phases. We cannot guarantee that we will receive all necessary regulatory approvals, nor can we accurately predict the product approval timelines, or other requirements that may be imposed by regulators (for example, further clinical trials or other requirements proving safety and effectiveness of AeroForm). Furthermore, there may be changes to regulatory standards, which could delay or prevent us from obtaining the necessary regulatory approvals. In addition, any future changes to AeroForm may require separate clearance or approval.

Any delays or barriers to our obtaining necessary regulatory clearances would limit the size of the market opportunity until such time, if any, that we will be able to obtain such clearances for AeroForm.

We are dependent on the protection and enforcement of our intellectual property rights.

The protection of the intellectual property we rely on is critical to our business and commercial success. If we are unable to protect or enforce the intellectual property rights embodied in AeroForm, there is a risk that other companies will incorporate the intellectual property into their technology, which could adversely affect our ability to compete in the market for tissue expanders.

As of December 31, 2016, our patent portfolio consisted of four issued and three pending U.S. patents, and 26 issued and 12 pending foreign patents. Our issued foreign patents were granted in Australia, Hong Kong, Japan and several of the major countries in the European Union.

In addition, some of the key patents related to AeroForm are co-owned by us and Shalon Ventures (includes U.S. patents) or licensed to us exclusively by Shalon Ventures (non-U.S. patents only). Although the license agreement between us and Shalon Ventures may only be terminated by a party in limited circumstances, if Shalon Ventures was to terminate the license agreement it could affect our ability to produce and sell AeroForm outside the U.S.

We may be subject to future third party intellectual property rights disputes.

We do not believe that our activities infringe any third party's intellectual property rights. To date, no third party has asserted this to be the case. However, in the future we may be subjected to infringement claims or litigation arising out of patents and pending applications of our competitors, or additional proceedings initiated by third parties or intellectual property authorities to re-examine the patentability of licensed or owned patents. The defense and prosecution of intellectual property claims and litigation, and related legal and administrative proceedings are costly and time-consuming to pursue, and their outcome is uncertain. If we infringe the rights of third parties, we could be prevented from selling AeroForm or any future products and be forced to defend against litigation and to pay damages.

We have a limited operating history and may face difficulties encountered by companies early in their commercialization.

We have a limited operating history upon which to evaluate our business and forecast future net sales and operating results. In assessing our business prospects, you should consider the various risks and difficulties frequently encountered by companies early in their commercialization in competitive markets, particularly companies that develop and sell medical devices. These risks include our ability to:

- implement and execute our business strategy;
- expand and improve the productivity of our sales force and marketing programs;
- increase awareness of our brand and build loyalty among surgeons;

- manage expanding operations;
- respond effectively to competitive pressures and developments; and
- successfully implement design changes to refine AeroForm over time and obtain any updates to regulatory approvals related to the changes.

Ongoing regulation of our products may limit how we manufacture and market our product candidates, which could materially impair our ability to generate revenue.

Once regulatory approval has been granted, an approved product and its manufacturer are subject to ongoing review and regulation. Any approved or cleared product may only be promoted for its approved or cleared uses consistent with the products labeling. In addition, product labeling, packaging, QSR requirements, adverse event reporting, advertising and promotion, scientific and educational activities, and promotional activities involving the internet and social media will be subject to extensive regulatory requirements. To ensure compliance with regulatory requirements, medical device manufacturers are subject to market surveillance and periodic, pre-scheduled and unannounced inspections by the FDA, and these inspections may include the manufacturing facilities of our subcontractors.

Failure to comply with applicable regulatory requirements can result in enforcement action by the FDA, including various sanctions such as warning letters; fines, injunctions, and civil penalties; recall or seizure of our products; operating restrictions, partial suspension or total shutdown of production; refusal to grant 510(k) clearance or PMA approvals of new products; withdrawal of 510(k) clearance or PMA approvals; and criminal prosecution. Further, the cost of compliance with post-approval regulations may have a negative effect on our operating results and financial condition.

If we market products in a manner that violates fraud and abuse and other health care laws, we may be subject to significant enforcement and sanctions.

In addition to FDA restrictions on marketing of medical device products, several other types of state, federal and foreign health care laws, including those commonly referred to as "fraud and abuse" laws, have been applied to restrict certain marketing practices in the medical device industry. These laws include, among others, the following:

- The federal anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any good, facility, item or service reimbursable under a federal health care program, such as Medicare or Medicaid. This statute has been interpreted broadly to apply to arrangements between pharmaceutical manufacturers and prescribers, purchasers, and formulary managers, among others. There are statutory exceptions and regulatory safe harbors available to protect certain common activities from prosecution or other regulatory sanctions that must be strictly followed. Failure to meet all of the requirements of a particular statutory exception or regulatory safe harbor does not make the conduct per se illegal under the anti-kickback statute, but subjects the arrangement to a case-by-case basis review of its facts and circumstances. The Affordable Care Act amended the federal anti-kickback statute such that a person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation and codified case law 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 federal False Claims Act.
- Federal false claims laws, including the civil False Claims Act, false statement laws and civil monetary penalty laws prohibit, among other things, any person or entity from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to have a false claim paid. The False Claims Act contains qui tam provisions, which allow a private individual, or relator, to bring a civil action on behalf of the federal government alleging that the defendant submitted a false claim to the federal government and to share in any monetary recovery. Certain marketing practices, including off-label promotion, may violate federal false claims laws.
- The federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, created new federal criminal statutes that prohibit among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any health care benefit program, including private third-party payers, and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for health care benefits, items or services. Like the federal anti-kickback statute, the Affordable Care Act amended the intent standard for certain health care fraud provisions under HIPAA such that a person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and their respective implementing regulations, imposes specified requirements relating to the privacy, security and transmission of individually identifiable health information.
- The federal Physician Payments Sunshine Act and its implementing regulations require that certain manufacturers of drugs, devices, biologicals and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program (with certain exceptions) to annually report to the Centers for Medicare & Medicaid Services (CMS) information related to certain payments or other transfers of value made to physicians and teaching hospitals, and to report annually certain ownership and investment interests held by physicians and their immediate family members.

- The U.S. Foreign Corrupt Practices Act, the U.K Anti-Bribery Act, and similar anti-bribery laws that generally prohibit companies and their intermediaries from making improper payments to officials for the purpose of obtaining or retaining business.
- Analogous local, state and foreign laws, such as state anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving health care items or services reimbursed by non-governmental third-party payors, including private insurers; state laws that require medical device companies to comply with the device industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to health care providers and entities; state and foreign laws that require device

manufacturers to report information related to payments and other transfers of value to health care professionals or entities; and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable health care laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other health care laws.

Medical device and other health care companies have been prosecuted under these laws for a variety of promotional and marketing activities, such as providing free trips, free goods, sham consulting fees and grants and other monetary benefits to prescribers; and engaging in off-label promotion. If our operations are found to be in violation of any of the health regulatory laws described above or any other laws that apply to us, we may be subject to significant sanctions, including criminal fines, civil monetary penalties, administrative penalties, disgorgement, individual imprisonment, exclusion from participation in federal health care programs, integrity obligations, contractual damages, injunctions, recall or seizure of products, total or partial suspension of production, 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 results of operations.

We are exposed to the risk of product liability and product recalls.

We are exposed to the risk of product liability claims as a company that sells products to the public. This is a particularly sensitive issue for health care companies, and the medical device market has a history of product recalls and litigation. We may be exposed to the risk of product liability claims, which are inherent in the design, manufacturing, marketing and use of medical devices. Furthermore, we must comply with medical device reporting and vigilance requirements in each jurisdiction in which AeroForm and any future products are marketed.

Any product liability claim, with or without merit, may cause damage to our reputation and business. We have sought to minimize this risk by taking out product liability insurance, but this may not be sufficient if a large damages claim is awarded. If we are called as a defendant in a product liability suit, this could be a costly activity that may also divert management focus away from key strategic initiatives of the business, potentially adversely impacting financial performance and damaging our reputation.

Off-label use of AeroForm may harm its image or lead to substantial penalties.

We are only permitted to market AeroForm for the uses indicated on the labeling cleared by the relevant regulatory bodies in each market. We cannot prevent a surgeon or other third party from using or recommending the use of AeroForm for purposes outside of its approved intended use. This may lead to the increased likelihood of an adverse event, or inadequate treatment of a patient's condition, which could harm our reputation in addition to potential claims for damages. If we were deemed to have marketed AeroForm for off-label use, we could be subject to civil or criminal sanctions, including fines, damages claims, injunctions or other penalties and our reputation within the industry may be damaged.

We must attract and retained skilled staff to pursue our business model.

Our long term growth and performance is dependent on attracting and retaining highly skilled staff. The medical device industry, and the San Francisco Bay area where we maintain our headquarters, has strong competition for highly skilled workers (including senior researchers, clinical staff, and management) due to the limited number of people with the appropriate skill set.

We currently employ, or engage as consultants, a number of key management and scientific personnel. There is a risk that we will be unable to attract and retain the necessary staff to pursue our business model. In particular, if Mr. Scott Dodson, our President and CEO, were to leave us, we would lose significant technical and business expertise, and we might not be able to find a suitable replacement in a timely manner. This would affect how efficiently we operate our business and our future financial performance could be impacted.

We have structured incentive programs for our key personnel, including an equity incentive plan. Despite these measures, there is no guarantee that we will be able to attract and retain suitable qualified personnel, which could negatively affect our ability to reach our goals.

Risks Related to Our Industry

We may be adversely affected by health care reform legislation in the U.S. and other countries.

In recent years, there have been numerous initiatives at the U.S. federal and state levels for comprehensive reforms affecting the payment for, the availability of and reimbursement for healthcare services. Recent legislation and many of the proposed bills include funding to assess the comparative effectiveness of medical devices. It is unclear what impact the comparative effectiveness analysis will have on our products or financial performance. If significant reforms are made to the healthcare system in the U.S., or in other jurisdictions, those reforms could adversely affect our financial condition and operating results.

In March 2010, President Obama signed into law comprehensive healthcare reform legislation known as the *Affordable Care Act*, or the ACA, as modified by the Health Care and Education Reconciliation Act of 2010 (U.S.). The ACA was a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of health care spending, enhance remedies against health care fraud and abuse, add new transparency requirements for health care and health insurance industries, impose new taxes and fees on pharmaceutical and medical device manufacturers and impose additional health policy reforms. Substantial new provisions affecting compliance also were enacted, which may affect our business practices with health care practitioners. Complying with the ACA could significantly increase our costs.

Some of the provisions of the ACA have yet to be implemented, and there have been judicial and Congressional challenges to certain aspects of the ACA. In addition, the current Trump administration and Congress may continue to seek legislative and regulatory changes, including repeal and replacement of certain provisions of the ACA. President Trump also signed an Executive Order in January 2017 directing federal agencies with authorities and responsibilities under the ACA to waive, defer, grant exemptions from, or delay the implementation of any provision of the ACA that would impose a fiscal or regulatory burden on states, individuals, health care providers, health insurers, or manufacturers of pharmaceuticals or medical devices. We continue to evaluate the effect that the ACA and its possible repeal and replacement has on our business.

We expect that health care reform measures that have been and may be adopted in the future may result in more rigorous coverage criteria and in additional downward pressure on the price that we receive for our products. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payers. The implementation of cost containment measures or other health care reforms may affect our ability to generate revenue and profits or commercialize our product candidates.

The manufacturing facilities of AeroForm must comply with stringent regulatory requirements.

The manufacturing facilities for AeroForm must meet stringent standards. As we intend to outsource our main manufacturing to a contract manufacturer located in Costa Rica, we will have limited direct control over the compliance of the facility which manufactures AeroForm. If the manufacturer does not comply with any relevant requirements, this may adversely affect our ability to sell AeroForm. The FDA routinely inspects all medical device companies, including contract manufacturers, for compliance with the Quality Systems Regulation, or QSR. Furthermore, to maintain the CE Mark, National Standards Authority of Ireland, our Notified Body, will regularly audit our suppliers and manufacturers. Failure to comply with the applicable regulatory requirements can result in, among other things, temporary manufacturing shutdowns, product recalls, product shortages, bans on imports and exports and a damaged brand name.

Our presence in the international marketplace exposes us to foreign operational risks.

We will seek to sell AeroForm in markets across Australia, the U.S., Europe, Canada, Latin America and Asia. As it is intended that the main manufacturing of AeroForm will be performed in Costa Rica, we will be exposed to risks of foreign regulations in Costa Rica and national trade laws, including import and export laws as well as customs regulations and laws. There are potentially high compliance costs associated with these laws and failure to comply with any applicable law or regulatory obligations could result in penalties and/or enforcement action (for example, stoppages or delays in clearing our products through customs).

Risks Related to our CDIs and Common Stock

Our principal stockholders could collectively exert control over us and may not make decisions that in the best interests of all stockholders.

As of March 15, 2017, our principal stockholders beneficially owned a substantial percentage of our voting stock. If these significant stockholders were to act together, they would be able to exert a significant degree of influence over our management and affairs and over matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions. Accordingly, there is a risk that these stockholders, although unrelated to each other, may make collective decisions that do not accord with, or are not in the best interests of, other stockholders and CDI holders. For example, the principal stockholders could, through their concentration of ownership, delay or prevent a change of control, even if a change of control is in the best interests of our other stockholders and CDI holders.

Provisions of our Certificate of Incorporation, our Bylaws and Delaware law could make an acquisition of us more difficult and may prevent attempts by stockholders to replace or remove current members of the Board.

Certain provisions of Delaware law, our Certificate of Incorporation and Bylaws could discourage, delay or prevent a change of control or deter tender offers for our common stock that stockholders and CDI holders may consider favorable, including transactions in which CDI holders might otherwise receive a premium for their CDIs.

Our Certificate of Incorporation authorizes us to issue up to 10,000,000 shares of preferred stock in one or more different series with terms to be fixed by our board of directors. Stockholder or CDI holder approval is not necessary to issue preferred stock in this manner. Issuance of these shares of preferred stock could have the effect of making it more difficult and more expensive for a person or group to acquire control of us, and could effectively be used as an anti-takeover device.

Our Bylaws provide for an advance notice procedure for stockholders or CDI holders to nominate director candidates for election or to bring business before an annual meeting of stockholders, including proposed nominations of persons for election to our board of directors, and require that special meetings of stockholders be called only by our chairman of the board, chief executive officer, president or the board pursuant to a resolution adopted by a majority of the board.

The anti-takeover provisions of Delaware law and provisions in our organizational documents may prevent our stockholders from receiving the benefit from any premium to the market price of our common stock offered by a bidder in a takeover context. Even in the absence of a takeover attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock if they are viewed as discouraging takeover attempts in the future.

Being a public company is expensive and administratively burdensome.

Upon the effectiveness of this registration statement, we will become subject to the periodic reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Although we have been listed on the ASX for about 2 years and have been required to file financial information and make certain other filings with the ASX, our status as a U.S. reporting company under the Exchange Act will cause us to incur additional legal, accounting and other expenses that we have not previously incurred. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. We also expect these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified individuals to serve on our board of directors (and the Audit and Risk Committee in particular) or as executive officers. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

The costs and management time involved in complying with Delaware laws, Australian laws and U.S. reporting requirements are likely to be significant.

As a Delaware company with an ASX listing and a registration as a foreign company in Australia, we will need to ensure continuous compliance with Delaware law and relevant Australian laws and regulations, including the listing rules and certain provisions of the Corporations Act. To the extent of any inconsistency between Delaware law and Australian law and regulations, we may need to make changes to our business operations, structure or policies to resolve such inconsistency. If we are required to make such changes, this is likely to result in interruptions to our operations, additional demands on key employees and extra costs.

ITEM 2. FINANCIAL INFORMATION.

SELECTED CONSOLIDATED FINANCIAL DATA

The following table sets forth our selected consolidated financial data for the periods, and as of the dates, indicated. You should read the following selected consolidated financial data in conjunction with our audited consolidated financial statements and the related notes thereto included elsewhere in this registration statement and the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of this registration statement.

We derived the consolidated statements of operations and comprehensive loss data for the years ended December 31, 2016, 2015 and 2014, and the consolidated balance sheet data as of December 31, 2016 and 2015, from our audited consolidated financial statements that are included elsewhere in this registration statement. We have derived the consolidated balance sheet data as of December 31,

2014 from our consolidated financial statements not included in this registration statement. Our historical results are not necessarily indicative of our results to be expected in any future period.

	Years Ended December 31,		
	2016	2015	2014
	(in thousands, except share and per share data)		
Consolidated Statements of Operations and Comprehensive Loss Data:			
Revenue	$ 570	$ 293	$ —
Cost of goods sold	4,543	1,906	—
Gross loss	(3,973)	(1,613)	—
Operating expenses:			
Research and development	7,164	4,827	4,143
Selling, general and administrative	7,986	4,640	2,229
Total operating expenses	15,150	9,467	6,372
Operating loss	(19,123)	(11,080)	(6,372)
Other expense (income):			
Interest expense	249	422	561
Other expense (income)	50	(341)	45
Total other expense (income), net	299	81	606
Loss before income taxes	(19,422)	(11,161)	(6,978)
Provision for income taxes	1	—	—
Net loss and comprehensive loss	(19,423)	(11,161)	$ (6,978)
Basic and diluted net loss per Class A common share	$ (0.26)	$ (0.32)	$ (7.74)
Weighted-average number of shares used in computing basic and diluted net loss per common share	74,793,530	35,377,588	901,666

	December 31,		
	2016	2015	2014
		(in thousands)	
Consolidated Balance Sheet Data:			
Cash and cash equivalents	$ 11,477	$ 19,113	$ 1,651
Working capital	$ 10,206	$ 17,143	$ 279
Total assets	$ 15,529	$ 20,898	$ 2,138
Long-term debt, including current portion	$ 1,195	$ 2,584	$ 3,564
Total liabilities	$ 3,360	$ 3,852	$ 4,325
Total stockholders' equity	$ 12,169	$ 17,045	$ (2,187)

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 together with our consolidated financial statements and related notes appearing elsewhere in this registration statement. This discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. You should review the "Risk Factors" section of this registration statement for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements described in the following discussion and analysis.

Overview

AirXpanders is a U.S. based medical device company whose principal business is to design, manufacture, sell and distribute medical devices used in breast reconstruction procedures following mastectomy. Our AeroForm Tissue Expander System (AeroForm) is a needle-free, patient-controlled tissue expander used in patients undergoing two-stage breast reconstruction following mastectomy prior to the insertion of a breast implant. AeroForm was granted its first CE mark in Europe in October 2012, was approved by Australia's Therapeutic Goods Administration in October 2013, commenced its initial marketing release of AeroForm in Australia in January 2015, and was granted its U.S. Food and Drug Administration, or FDA, de novo marketing authorization in December 2016 (as a Class II medical device). To date, we have been primarily engaged in developing and launching our initial product technology, completing clinical trials, building the manufacturing infrastructure to support commercialization efforts, recruiting key personnel and raising capital.

Breast cancer is the second leading cause of death in women globally. Most women being treated for breast cancer undergo some type of surgery to address the primary breast tumor. The purpose of the surgery is to remove as much of the cancer as possible. Breast-conserving surgery (also known as lumpectomy or partial mastectomy) can be sufficient for early-stage breast cancer patients. However, for those patients who have a more advanced breast cancer or who have a genetic predisposition for developing breast cancer, treatment often requires mastectomy, which is the removal of one or both breasts.

In the U.S. alone, of the approximately 300,000 new diagnoses of female breast cancer every year, 36% of early-stage patients and 60% of late-stage patients receive a mastectomy. Mastectomies are also performed on a proportion of previously diagnosed patients who originally had a form of breast-conserving surgery, as well as on women undertaking mastectomy as a preventative measure prior to any cancer diagnosis. Approximately 60% of mastectomies in the U.S. involve the removal of both breasts. With increasing awareness, earlier detection and the emerging practice of pre-emptive breast removal surgery, death rates from breast cancer have been declining since the late 1980s, particularly in women younger than 50 years of age, while mastectomy rates have been increasing.

Although a traumatic and painful procedure, mastectomy has become increasingly accepted and adopted as a pre-emptive measure to prevent breast cancer. Women who have been diagnosed with cancer in one breast may elect to have the other breast removed as a precautionary measure. Similarly, preventative surgery to remove both breasts is an increasingly sought after option for women with a strong family history of breast cancer or who have been identified as having disease causing mutations in certain genes, such as BRCA1 or BRCA2, which predispose them to a significantly elevated risk of developing breast cancer. After a mastectomy, breast reconstruction is available to women who want to rebuild the shape and look of the breast.

Breast reconstruction restores breast symmetry after a mastectomy by creating a breast mound, similar in size, shape, and contour to the contralateral breast. The most common technique used in breast reconstruction is two-stage reconstruction which involves tissue expansion to create space for a breast implant. Tissue expansion involves expansion of the breast skin and muscle using a temporary tissue expander. Tissue expanders on the market today are saline-based and require the patient to go to the surgeon's office every few weeks to receive an injection of saline to fill the expander. Typically, it can take several weeks to several months to complete the process to reach the desired volume. This tissue expander is removed after a few months and microvascular flap reconstruction or the insertion of a breast implant is done at the time. Traditional saline-based tissue expanders have silicone outer shells and an external magnetic port to allow for saline fluid injections.

Instead of saline, AeroForm, a needle-free device, uses a controlled delivery of small amounts of carbon dioxide (CO_2) gas to achieve the tissue expansion usually required prior to placement of a breast implant. It eliminates the need for the needle injections required for traditional saline-based tissue expanders, gives patients the ability to control the expansion process themselves, and allows patients to achieve full expansion faster than is achieved using traditional saline tissue expanders. In a series of clinical trials, AeroForm has been shown to enable patients to proceed to the insertion of a breast implant faster than under the current standard of care.

AirXpanders was incorporated in Delaware in 2005 and is headquartered in Palo Alto, California. We have incurred net losses and cash flow deficits from operations since our inception. During the year ended December 31, 2016, we had revenues of approximately $0.6 million and a net loss of $19.4 million. Our accumulated deficit was approximately $66.3 million at December 31, 2016. To date,

our products have been approved for marketing and sales in Europe, Australia and most recently, in the U.S. We commenced the sale of our product in Australia in 2015, and in the U.S. in 2017.

On June 22, 2015, we issued 29,629,654 shares of Common Stock in connection with an initial public offering (IPO) on the Australian Securities Exchange, or the ASX, a concurrent private placement under Regulation D of the Securities Act (or Concurrent Placement) and the conversion of convertible bridge notes payable and related accrued interest. We raised a total of approximately

$30.1 million, net of issuance costs of approximately $2.9 million. Of this amount, $25.1 million were net cash proceeds directly from the IPO, and $5.0 million were cash proceeds from the Concurrent Placement and private placement of convertible bridge notes payable. In connection with the IPO, all of our existing shares of preferred stock were converted into common stock.

In June 2016, we issued 8,771,930 shares of Common Stock in connection with an equity offering on the ASX. Our cash proceeds were approximately $14.2 million, net of issuance costs of approximately $0.7 million.

In February 2017, we issued 16,304,348 shares of Common Stock in connection with an equity offering on the ASX. We raised a total of $34.1 million, net of issuance costs of approximately $1.5 million.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements prepared in conformity with U.S. GAAP. The preparation of these financial statements requires us to make certain estimates and assumptions that may affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reported periods. These estimates and assumptions, including those related to valuation of our common stock prior to the IPO, valuation of stock options and valuation of our inventory, have been our most significant to date. We base our estimates on our historical experience and various other assumptions that are believed to be reasonable under the circumstances. Actual results could differ materially from our estimates under different assumptions or conditions.

We believe that our application of the following accounting policies, each of which require significant judgments and estimates on the part of management, are the most critical to aid in fully understanding and evaluating our financial condition and results of operations. Our significant accounting policies are more fully described in Note 3, "Summary of Significant Accounting Policies," to our consolidated financial statements appearing elsewhere in this registration statement.

Revenue Recognition

We generate all of our revenue from sales of AeroForm. We recognize revenue from product sales when the following four criteria are met: delivery has occurred, there is persuasive evidence of an arrangement, the fee is fixed or determinable, and collectability of the related receivable is reasonably assured. Revenue recognition generally occurs after a device has been implanted in a patient and a purchase order has been received from the customer.

With respect to these criteria:

- the evidence of an arrangement generally consists of a purchase order with the necessary approvals received from the customer and acceptance by us;
- the transfer of title and risk and rewards of ownership are passed to the customer;
- the selling price is fixed and agreed with the customer; and
- when doubt exists about collectability from specific customers, we defer revenue from sales of products to those customers until payment is received.

In certain circumstances, we allow customers to return products for credit or replacement products. We consider these transactions to be product returns. We do not yet have sufficient historical experience on which to base an estimate of returns, and therefore in such instances, we recognize revenue when the right of return has lapsed. We determine this point to be when the product was implanted or otherwise consumed, which indicated that we had no further obligations to the customer and that the sale was complete. Prospectively, we will continue to evaluate whether we have sufficient data to determine return estimates.

Inventory

We state inventory at the lower of cost or market value, with cost determined by the first-in, first-out method. When needed, we provide reserves for excess or obsolete inventory. Inventory cost is written down to market value when cost exceeds market value, which we estimate using current levels of inventory, as well as historical sales data and forecasts of sales, as well as current reimbursement rates. Additionally, we record a provision for excess, expired, and obsolete inventory based primarily on estimates of forecasted revenues. A significant change in the timing or level of demand for products as compared to forecasted amounts may result in recording additional provisions for excess, expired, and obsolete inventory in the future. When capitalizing inventory, we consider factors such as status of regulatory approval, alternative use of inventory, and anticipated commercial use of the product.

Stock-Based Compensation

Stock-based compensation expense for employee awards is measured at the grant date, based on the fair value of the awards ultimately expected to vest and is recognized as an expense, on a straight-line basis, over the requisite service period, which is generally the vesting period. Forfeitures are required to be estimated at the time of grant and revised if necessary in subsequent periods if actual forfeitures or vesting differ from those estimates. Such revisions could have a material effect on our operating results.

We use the Black-Scholes option-pricing model (Black-Scholes model) to determine the estimated fair value of our stock options utilizing various inputs with respect to expected term, expected stock price volatility, expected dividend yield and risk-free

interest rates. We use the simplified method to estimate expected term which is a weighted average of the vesting periods and the total term of the award. We estimate expected volatility using comparable public companies' volatility for similar terms as we do not have a long enough operating period as a public company to estimate our own volatility. As we develop our own volatility history over time, we will incorporate that history into our expected volatility estimates. The Black-Scholes model calls for a single expected dividend yield as an input. We have never paid a dividend and do not have any current plans to do so. We base our risk-free interest rate on the U.S. Treasury zero coupon issues in effect at the time of the grant that correspond to the expected term of the option.

We recognize the fair value of awards granted to nonemployees as stock-based compensation expense over the period in which the related services are received.

Going Concern

As we have limited commercialization of our product, we are generating a small amount of revenue and are not cash flow positive or profitable. Our net revenue from sales of AeroForm was approximately $0.6 million for the year ended December 31, 2016 and, as of December 31, 2016, we had cash and cash equivalents of approximately $11.5 million. Our existing capital, which, since February 2017, includes $32.6 million in net cash proceeds raised from an equity offering on the ASX, may be insufficient to meet our requirements (including the costs of commercializing our products, conducting clinical trials, obtaining regulatory approvals and partnering with third-party manufacturers) and cover any losses, so we will need to raise additional funds through financings or borrowings prior to the middle of 2018. Failure to raise additional funds could delay, reduce, or halt our commercialization and clinical trial efforts and would impact our ability to continue as a going concern.

Emerging Growth Company Status

The Jumpstart our Business Startups Act of 2012 (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. We have elected to avail ourselves of this exemption to take advantage of the extended transition period for complying with new or revised accounting standards.

Results of Operations

The following table sets forth significant components of our results of operations for the periods presented.

	Years Ended December 31,		
	2016	2015	2014
	(in thousands)		
Revenue	$ 570	$ 293	$ —
Cost of goods sold	4,543	1,906	—
Gross loss	(3,973)	(1,613)	—
Operating expenses:			
Research and development	7,165	4,827	4,143
Selling, general and administrative	7,986	4,640	2,229
Total operating expenses	15,151	9,467	6,372
Operating loss	(19,123)	(11,080)	(6,372)
Other income (expense):			
Interest expense	249	422	561
Other expense (income)	50	(341)	45
Total other expense (income), net	299	81	606
Operating loss before income tax provision	19,422	11,161	6,978
Provision for income taxes	1	—	—
Net loss and comprehensive loss	$ 19,423	$ 11,161	$ 6,978

2016 Compared to 2015 Compared to 2014

Revenue and Cost of Goods Sold

	Years Ended December 31,		Year-over-Year % Change
	2016	2015	
	(in thousands)		
Revenue	$ 570	$ 293	95%
Cost of goods sold	4,543	1,906	138%
Gross loss	$ (3,973)	$ (1,613)	146%

The Company commenced commercial operations in 2015. As such, there was no revenue and corresponding cost of goods sold in 2014.

Revenue. Total revenue in 2016 was $0.6 million as sales for the AeroForm Tissue Expander System increased by 95% compared to 2015. During 2016, we continued to grow our market share as we began to penetrate and gain adoption at a number of hospitals in Australia. While we expect to achieve increased market adoption in Australia, our overall success as a company is primarily dependent on successful commercialization of AeroForm in the U.S. We have recently commenced commercialization of AeroForm in the U.S.

Cost of Goods Sold. The increase in cost of goods sold of approximately $2.6 million, or 138%, in 2016 compared to 2015 was primarily related to the ongoing scale up of our manufacturing capability in 2016, primarily related to increased personnel expenses. In addition, we recorded an increase of $1.5 million in our inventory provision in 2016 compared to 2015, primarily related to lower of cost or market, or LCM, adjustments.

We expect to continue to experience gross losses in 2017 as we continue to manufacture our products at volumes not sufficient to reduce the cost to manufacture to allow positive gross profit given current forecast average selling prices in the U.S. and reimbursement rates (which determine pricing to hospitals) in Australia.

Total operating expenses:

	Years Ended December 31,			Year-over-Year % Change	
	2016	2015	2014		
	(in thousands)				
Research and development	$ 7,165	$4,827	$4,143	48%	17%
Selling, general and administrative	7,986	4,640	2,229	72%	108%
Total operating expenses	$15,151	$9,467	$6,372	60%	49%

Research and Development Expense. Research and development expenses increased by $2.3 million, or 48%, in 2016 compared to 2015, primarily due to an increase in personnel expenses of $1.5 million driven by the increase in the number of employees, an increase of $0.4 million for clinical expenses associated with conducting our clinical trials, and an increase in expenses attributable to expanding our office space. Research and development expenses increased $0.7 million, or 17%, in 2015 compared to 2014, primarily due to an increase in tooling and supplies expenses of $0.8 million.

Selling, General and Administrative Expense. Selling, general and administrative expense increased by $3.3 million, or 72%, in 2016 compared to 2015 principally due an increase in personnel expenses of $2.5 million as we hired key personnel to develop infrastructure to support anticipated commercialization efforts in the U.S. Professional service fees also increased by $0.8 million primarily due to the additional compliance expenses as a result of becoming a listing on the ASX in June 2015. Selling, general and administrative expense increased by $2.2 million, or 108%, in 2015 compared to 2014 principally due to consulting fees of $0.9 million, an increase in personnel expenses of $0.6 million, and sales and marketing expense of $0.4 million as we prepared for our commercial launch in Australia in 2015.

Total Other Expense (Income), Net

	Years Ended December 31,			Year-over-Year % Change	
	2016	2015	2014		
	(in thousands)				
Interest expense	$ 249	$ 422	$ 561	(41%)	(25%)
Other expense (income), net	50	(341)	45	(115%)	(858%)
Total other expense (income), net	$ 299	$ 81	$ 606	269%	(87%)

Interest Expense. The decrease in interest expense of $0.2 million in 2016 as compared to 2015 occurred due lower interest expense resulting from the conversion of an outstanding convertible loan into equity upon our IPO in June 2015, and lower outstanding debt balances. The decrease in interest expense of $0.1 million in 2015 as compared to 2014 occurred due lower interest expense resulting from the conversion of an outstanding convertible loan into equity upon our IPO in June 2015.

Other expense (income), net. Foreign currency translation and remeasurement gains or losses included in other expense (income), net in the accompanying consolidated statements of operations and comprehensive loss was a loss of under $0.1 million in 2016, a gain of $0.3 million in 2015 and a loss of under $0.1 million in 2014 due to fluctuations in the foreign exchange rate.

Liquidity and Capital Resources

We have incurred losses since our inception in 2005 including net losses after taxes of $19.4 million, $11.2 million and $7.0 million in 2016, 2015 and 2014, respectively, and as of December 31, 2016, we had an accumulated deficit of approximately $66.3 million. We have financed our operations from a combination of sales of equity securities and issuances of convertible term notes.

In 2015, we raised net proceeds of $30.1 million through the issuance of 29,629,654 shares of Common Stock in connection with an IPO on the ASX, a Concurrent Placement and the issuance of convertible bridge notes, which were converted to common shares at the IPO. In connection with the IPO, all of our existing shares of preferred stock were converted into common stock. In June 2016, we generated $14.2 million, net of issuance costs in an equity offering. In February 2017, we generated net proceeds of $32.6 million. We believe that the cash from this offering and our cash and cash equivalents balance of $11.5 million as of December 31, 2016 are sufficient to remain in operations through the middle of 2018.

In January 2014, the Company borrowed $3,500,000 under a loan and security agreement with a financial institution which matures in July 2017. Interest is paid monthly on the principal amount at 7.34% per annum. The loan is secured by substantially all of the Company's assets, excluding intellectual property. Under the terms of the agreement, interest-only payments were made monthly through March 2015, with principal payments commencing in April 2015, due in 28 equal monthly installments. A fee of $271,250 is

due at maturity, which is being accrued over the term of the loan. In March 2015, the Company amended the loan and security agreement to extend the interest-only period from March 2015 to April 2015, with principal payments commencing in May 2015, due in 27 equal monthly installments. The Company had the option to borrow an additional $3,500,000 under the agreement, with the same terms, if certain conditions were met. This option expired unexercised in June 2015.

The following table sets forth the major sources and uses of cash for each of the periods set forth below:

	Years Ended December 31,		
	2016	2015	2014
		(in thousands)	
Net cash used in operating activities	$(19,154)	$(10,835)	$(6,791)
Net cash used in investing activities	(1,151)	(840)	(96)
Net cash provided by financing activities	12,669	29,137	3,313
Net (decrease) increase in cash and cash equivalents	$ (7,636)	$ 17,462	$(3,574)

Cash Flows from Operating Activities

In 2016, cash used in operating activities of $19.2 million resulted primarily from a net loss of $19.4 million, reduced by noncash adjustments, primarily inventory reserve adjustments of $1.5 million and stock based compensation of $0.4 million. Additional operating cash requirements consisted of $2.4 million for inventory purchases to support a ramp up in commercial activity in advance of a U.S. launch, offset by $0.5 million due to timing of payments for 2016 expenditures.

In 2015, cash used in operating activities of $10.8 million resulted primarily from a net loss of approximately $11.2 million, reduced by noncash adjustments, primarily inventory LCM adjustments of $0.5 million and stock based compensation of $0.1 million. Additional operating cash requirements consisted of $0.9 million for inventory purchases to support a ramp up in commercial activity in Australia, offset by $0.5 million due to timing of payments for 2015 expenditures.

In 2014, cash used in operating activities of $6.8 million resulted primarily from a net loss of approximately $7.0 million, reduced by noncash adjustments, primarily inventory LCM adjustments of $0.2 million and stock based compensation of $0.1 million. Additional operating cash requirements consisted of $0.3 million for inventory purchases.

We anticipate cash outflows from operating activities to increase in 2017 as we increase our investment in sales and marketing resources, primarily headcount, as well as continue to investment in our manufacturing operations and validation activities at our third party contract manufacturing in Costa Rica.

Cash Flows from Investing Activities

Cash used in all years presented is primarily attributable to capital expenditures to support scaling up of manufacturing capability.

We anticipate cash outflows from investing activities to increase in 2017 as we continue to invest in additional capital equipment to support increased capacity.

Cash Flows from Financing Activities

In 2016, cash provided by financing activities of $12.7 million resulted primarily from approximately $14.2 million in net proceeds from our June 2016 equity offering in which we issued approximately 8.8 million shares of Common Stock. This was slightly offset by $1.5 million in principal payments we made on our outstanding note due July 2017.

In 2015, cash provided by financing activities of $29.1 million resulted from approximately $30.1 million in net proceeds from our IPO in June 2015, the Concurrent Placement and the issuance of convertible notes payable. Together, such net proceeds more than offset $1.0 million in principal payments we made on our outstanding note due July 2017.

In 2014, cash provided by financing activities of $3.3 million resulted primarily from $3.4 million in net proceeds from a note issuance and $1.0 million of issuance of Series E preferred shares, offset by $1.1 million in loan payments.

Funding Requirements

As of December 31, 2016, our primary source of liquidity was our cash and cash equivalents on hand of approximately $11.5 million. We believe our current cash balances, together with net proceeds of $32.6 million from our February 2017 equity offering, will be sufficient to meet our anticipated cash requirements to fund our initial and full commercial launch of AeroForm in the U.S. in 2017, and build our supporting manufacturing infrastructure and salesforce to support our commercialization efforts through at least the middle of 2018. As such, we will need to raise additional funds through financings or borrowings prior to the middle of 2018. Failure to raise additional funds could delay, reduce, or halt our commercialization and clinical trial efforts and would impact our ability to continue as a going concern.

Our forecast of the period of time through which our financial resources will be adequate to support our operations and further expand the commercialization of our product, and our expectations about raising additional funds, are forward-looking statements and

involve risks and uncertainties, and actual results could vary materially and negatively as a result of a number of factors, including the factors discussed in the "Risk Factors" section of this registration statement. We have based these estimates on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect.

Due to the numerous risks and uncertainties associated with the development and commercialization of AeroForm, we are unable to estimate precisely the amounts of capital and operating expenditures necessary to complete the development of, and to obtain full commercial scale launch in the U.S. Our funding requirements will depend on many factors, including, but not limited to, the following:

- the rate of progress and cost of our commercialization activities;
- the expenses we incur in marketing and selling AeroForm;
- the revenue generated by sales of AeroForm;
- the success of our investment in our manufacturing and supply chain infrastructure;
- the time and costs involved in obtaining regulatory approvals for AeroForm in new markets;
- the success of our research and development efforts;
- the emergence of competing or complementary developments; and
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights.

We may, from time to time, consider additional funding through additional equity and debt financings or from other sources. We will continue to manage our capital structure and to consider all financing opportunities, whenever they may occur, that could strengthen our long-term liquidity profile. Any such capital transactions may or may not be similar to transactions in which we have engaged in the past. There can be no assurance that any such financing opportunities will also be available on acceptable terms, if at all.

Off–Balance Sheet Arrangements

We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, that would have been established for the purpose of facilitating off-balance sheet arrangements (as that term is defined in Item 303(a)(4)(ii) of Regulation S-K) or other contractually narrow or limited purposes. As such, we are not exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in those types of relationships. We enter into guarantees in the ordinary course of business related to the guarantee of our own performance and the performance of our subsidiaries.

Contractual Obligations and Commitments

Our most significant clinical trial expenditures are to our clinical research organizations. The contracts with clinical research organizations are cancellable, with notice, at our option and do not have any cancellation penalties. These items are not included in the table below.

Our commitments for operating leases below relate to our lease of office, laboratory and manufacturing space in Palo Alto, California.

The following table summarizes our outstanding contractual obligations as of December 31, 2016:

	Total	2017	2018-2019	2020-2021	2022 and beyond
			(in thousands)		
Operating lease obligations	$1,133	$ 402	$ 731	$ —	$ —
Current portion of long-term debt, net of discount	1,396	1,396	—	—	—
	$2,529	$1,798	$ 731	$ —	$ —

Recent Accounting Pronouncements

For a discussion of recent accounting pronouncements please refer to Note 3, "Summary of Significant Accounting Policies", to our consolidated financial statements included in this registration statement.

Quantitative and Qualitative Disclosures About Market Risk

We design, manufacture, sell and distribute the AeroForm Tissue Expander System in Australia. We commenced initial marketing launch in the U.S. in January 2017. Our earnings and cash flows are exposed to market risk from changes in currency exchange rates and interest rates.

Interest Rate Sensitivity

Our cash and cash equivalents of $11.5 million at December 31, 2016 consisted of cash and money market funds, all of which will be used for working capital purposes. We do not enter into investments for trading or speculative purposes. When excess cash is available for investment, the goals of our investment policy are preservation of capital, fulfillment of liquidity needs and fiduciary control of cash and investments. We also seek to maximize income from our investments without assuming significant risk. Our primary exposure to market risk is interest income sensitivity, which is affected by changes in the general level of interest rates in the United States and Australia. Because of the short-term nature of our cash and cash equivalents, we do not believe that we have any material exposure to changes in their fair values as a result of changes in interest rates. The continuation of historically low interest rates in the United States will limit our earnings on investments held in U.S. dollars.

Our debt bears interest at a fixed rate and therefore has minimal exposure to changes in interest rates. As of December 31, 2016, the outstanding principal balance of long-term debt was $1.2 million due in July 2017.

Foreign Currency Risk

We conduct business in foreign currencies in Australia. Our reporting currency is the U.S. dollar. For U.S. reporting purposes, we translate all assets and liabilities of our non-U.S. operations at the period-end exchange rate and revenue and expenses at the average exchange rates in effect during the periods. The net effect of these translation adjustments is shown in the accompanying consolidated financial statements within other expense (income) as a component of net loss.

Through 2016, we generated all of our revenue and receivables in the Australian dollar (A$). Fluctuations in the exchange rate of the U.S. dollar against the Australian dollar, may result in foreign currency exchange gains and losses that may significantly impact our financial results. In 2016 and 2015, foreign currency translation and remeasurement gains or losses included in other expense (income), net in the consolidated statements of operations and comprehensive loss was a loss of under $0.1 million and a gain of $0.3 million, respectively. There were no foreign currency gains or losses in 2014.

All of the proceeds from our 2016 and 2015 offerings were denominated in Australian dollars and as of December 31, 2016 we held approximately U.S.$1.0 million denominated as Australian dollars. Accordingly, we have had and will continue to have exposure to foreign currency exchange rate fluctuations. A change of 10% or more in foreign currency exchange rates of the Australian dollar could have a material impact on our financial position and results of operations if our revenue continues to be denominated in or if we retain a substantial portion of our cash and cash equivalents in Australian dollars.

ITEM 3. PROPERTIES.

We lease approximately 15,000 square feet for office, research and development and manufacturing operations in Palo Alto, California under a non-cancelable operating lease. These premises have also been certified to the ISO 13485:2003 medical device standard. The term of the sublease expires on September 30, 2019. In April 2017, we signed a sublease for an additional approximately 24,000 square foot facility is San Jose, CA. The sublease expires in August 2019. In the event that the lease was terminated early and provided there is sufficient notice, we believe we could find suitable alternative premises with no interruption in operations. If the lease is terminated without notice or the premises were severely damaged there could be an impact on our operations and potentially an interruption in manufacturing, while we relocated and arranged for certification of the new premises. We believe that these premises are suitable and adequate for our needs now and for the foreseeable future.

ITEM 4. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT.

The following table sets forth, as of March 15, 2017, information regarding beneficial ownership of our Class A shares of common stock, and common stock held as CDIs, by the following:

- each person, or group of affiliated persons, who is known by us to beneficially own 5% or more of any class of our voting securities;
- each of our directors;
- each of our named executive officers; and
- all current directors and executive officers as a group.

Beneficial ownership is determined according to the rules of the SEC. Beneficial ownership generally includes voting or investment power of a security and includes shares underlying options that are currently exercisable or exercisable within 60 days of March 15, 2017. This table is based on information supplied by officers, directors and principal stockholders. Except as otherwise indicated, we believe that the beneficial owners of the CDIs and common stock listed below, based on the information each of them has given to us, have sole investment and voting power with respect to their shares, except where community property laws may apply.

Percentage of ownership is based on 95,854,584 shares of Class A outstanding common stock, or common stock equivalent CDIs, outstanding on March 15, 2017. Unless otherwise indicated, we deem shares subject to options that are exercisable within 60 days of March 15, 2017, to be outstanding and beneficially owned by the person holding the options for the purpose of computing percentage ownership of that person, but we do not treat them as outstanding for the purpose of computing the ownership percentage of any other person.

Because CDIs represent one-third of a share of our common stock, converting the number of CDIs owned by the person holding them into the equivalent number of shares of common stock may result in fractional shares of common stock. In the following table, the number of shares of common stock owned by each beneficial owner is rounded down to the nearest whole share of common stock.

As of March 15, 2017, no shares of Class B common stock had been issued or were outstanding.

Unless otherwise indicated in the table, the address of each of the individuals named below is: c/o AirXpanders, Inc., 1047 Elwell Court, Palo Alto, California 94303, U.S.A.

Name and address of Beneficial Owner	Number of shares of Common Stock	Percentage of Common Stock
5% Shareholders		
Vivo Ventures Fund(1)	16,842,159	17.6%
GBS Venture Partners Pty Ltd (GBS Bioventures IV A/C)(2)	14,934,786	15.6%
Prolog Capital II, L.P.(3)	6,687,292	7.0%
Regal Funds Management Pty Ltd(4)	5,634,068	5.9%
Directors and Executive Officers		
Barry Cheskin(5)	484,587	*
Dennis Condon(6)	116,177	*
Gregory Lichtwardt	—	*
Zita Peach	—	*
Tadmor Shalon(7)	889,149	*
Scott Dodson(8)	2,262,355	2.3%
Scott Murcray	—	*
All directors and executive officers as a group (7 persons)(9)	3,752,268	3.8%

* Indicates less than 1%.

(1) Based upon the information filed by Vivo Ventures Fund with the ASX via a Substantial Holder Notice dated March 1, 2017. Vivo Ventures Fund includes Vivo Venture Fund VII L.P. (Vivo VII) and Vivo Ventures VII Affiliates Fund L.P. (Vivo Affiliates VII). Vivo Ventures VII, LLC (Vivo Ventures VII) is the sole general partners of Vivo VII and Vivo Affiliates VII. The managing members of Vivo Ventures VII are Drs. Albert Cha, Edgar Engleman, Frank Kung, Chen Yu and Mr. Shan Fu, each of whom may be deemed to have shared voting and dispositive power of the shares held by Vivo VII and Vivo Affiliates VII. The address for Vivo Ventures Fund is 505 Hamilton Ave #200, Palo Alto, CA 94301.

(2) Based upon the information filed by GBS Venture Partners Pty Limited with the ASX via a Substantial Holder Notice dated March 7, 2017. The address for GBS Venture Partners Pty Limited is P.O. Box 36, Flinders Lane, Melbourne VIC 8009, Australia.

(3) Based upon the information provided by with the ASX via a Substantial Holder Notice dated February 22, 2017, with additional information since that date reported by our share register service provider. Prolog Ventures II, LLC is the General Partner of Prolog Capital II, L.P. Each of Gregory R. Johnson, Ph.D., Brian L. Clevinger, Ph.D. and llya B. Nykin are members of Prolog Ventures II, LLC, and each may be deemed to have voting and investment power of the shares held by Prolog Capital II, L.P. Each of Drs. Johnson and Clevinger and Mr. Nykin disclaim beneficial ownership of such shares, except to the extent of his pecuniary interest therein, if any. The address for Prolog Capital II, L.P. is 7701 Forsyth Blvd., Suite 1095, St. Louis, MO 63105.

(4) Based upon the information provided by our share register service provider. The address for Regal Funds Management Pty Ltd. is Level 47, Gateway, 1 Macquarie Place, Sydney NSW 2000, Australia.

(5) Includes 337,049 shares subject to options exercisable within 60 days of March 15, 2017. Mr. Cheskin's shares include 147,538 shares held by Mr. Cheskin directly.

(6) Includes 116,177 shares subject to options exercisable within 60 days of March 15, 2017.

(7) Includes 115,167 shares subject to options exercisable within 60 days of March 15, 2017. Mr. Shalon's shares include 60,000 shares held by Mr. Shalon directly and 713,982 shares held indirectly in seven separate trusts of which he has no control over 272,536 shares held in trust for the benefit of his brother, Mr. Tidhar Shalon in the Tidhar Shalon Revocable Trust u/a/d 7/31/1998; and 106,778 shares held in trust for the benefit of his wife, Ms. Michal Shalon in the Michal Shalon Trust Tadmor and Michal Shalon Revocable Trust Separate Property 8/25/1998.

(8) Consisted solely of shares subject to options exercisable within 60 days of March 15, 2017.

(9) Includes 2,830,748 shares subject to options exercisable within 60 days of March 15, 2017.

ITEM 5. DIRECTORS AND EXECUTIVE OFFICERS.

Our directors and executive officers and their respective ages as of March 15, 2017 are as follows:

Name	Age	Position
DIRECTORS:		
Barry Cheskin[2]	56	Non-executive Chairman of the Board
Dennis Condon[1][2]	68	Non-executive director
Gregory Lichtwardt[1]	62	Non-executive director
Zita Peach[2]	52	Non-executive director
Tadmor Shalon[1]	59	Non-executive director
EXECUTIVE OFFICERS:		
Scott Dodson	52	President and Chief Executive Officer, Executive Director
Scott Murcray	46	Chief Financial Officer and Chief Operating Officer

(1) Member of Audit and Risk Committee.
(2) Member of Nomination and Remuneration Committee.

Directors

Set forth below is biographical information for our directors as well as the key experience, qualifications, attributes and skills that we believe such director brings to our Board.

Barry Cheskin — Co-Founder and Chairman of the Board

Barry Cheskin is a co-founder of AirXpanders and the Chairman of the Board. He was appointed to the Board in December 2006. He is also a member of the Nomination and Remuneration Committee. Mr. Cheskin has 30 years of experience, primarily in the general management of medical device enterprises in the U.S. Mr. Cheskin is President and CEO and a co-founder of PowerVision, Inc., a medical device company, where he has served since 2004. Mr. Cheskin holds a B.S. degree in Mechanical Engineering from MIT in Cambridge, Massachusetts, a M.S. degree in Mechanical Engineering from Stanford University, Stanford, California as well as an MBA degree from Columbia University in New York.

Scott Dodson — President and Chief Executive Officer, Executive Director

Scott Dodson has served as President and Chief Executive Officer, and director of AirXpanders since October 2010. Mr. Dodson has more than 25 years of executive management experience. Prior to AirXpanders, Mr. Dodson was President and CEO at Avantis Medical Systems from 2008 to 2010, a manufacturer of catheter-based endoscopic devices for the treatment of cancer and other abnormalities of the gastrointestinal tract. Mr. Dodson also served as President of Orthopedics at Orthofix International from 2006 to 2008, a manufacturer of reconstructive and regenerative orthopedic and spine solutions. Prior to that, Mr. Dodson held several senior management level positions with Boston Scientific for over 16 years. Mr. Dodson has a B.S. degree in Management from Indiana University in Bloomington, Indiana.

Dennis Condon — Non-executive Director

Dennis Condon was appointed non-executive director of AirXpanders in August 2012. He is a member of the Audit and Risk Committee, and the Nomination and Remuneration Committee. Mr. Condon has over 30 years of experience in key executive roles in the plastic surgery market, including as the former president of Mentor Aesthetics, one of the two largest global implant manufacturers. From 2013 to 2016, Mr. Condon has served as the CEO and President of Nuvesse Skin Therapies, a venture-backed cosmeceutical skincare company. From 2011 to 2013, he served as CEO and president of Merz Aesthetics, Inc. Mr. Condon has a B.S. degree in Biological Sciences from the University of California, Davis.

Gregory Lichtwardt — Non-executive Director

Gregory Lichtwardt was appointed non-executive director of AirXpanders in May 2016 and is the chair of the Audit and Risk Committee. Mr. Lichtwardt has more than 30 years in corporate financial management with over 20 years in executive financial leadership. From 2013 to 2015, Mr. Lichtwardt served as Executive Vice President, Operations and Chief Financial Officer at Accuray, a manufacturer of tumor treatment solutions. From 2003 to 2013, Mr. Lichtwardt was Executive Vice President, Operations and Chief Financial Officer at Conceptus, Inc., a manufacturer of minimally invasive devices for reproductive medical applications. He also

served as a member of the board of directors and chair of the audit committee at Biolase Inc., a manufacturer of laser systems for dentistry and medicine, from 2010 to 2013. Mr. Lichtwardt holds a B.S. degree in business administration from the University of Michigan, an MBA degree from Michigan State University and is also a certified management accountant.

Zita Peach — Non-executive Director

Zita Peach was appointed non-executive director of AirXpanders in May 2016 and is the chair of the Nomination and Remuneration Committee. Ms. Peach has over 25 years of executive experience with multi-disciplinary skills across international markets. She is also currently non-executive director at three other ASX listed companies, including Starpharma Limited since 2011, Monash IVF Group since 2016 and Visioneering Technologies Inc. since 2017. Ms. Peach also serves on private company, government and not for profit boards including Vision Eye Institute since 2011, Mt. Buller, Mt. Stirling Alpine Resorts management board since 2016 and Hudson Institute for medical research. Ms. Peach holds a Bachelor of Science degree in immunology from the University of Melbourne, Australia.

Tadmor Shalon — Non-executive Director

Tadmor (Teddy) Shalon was appointed non-executive director of AirXpanders in March 2005 and is a member of the Audit and Risk Committee. Mr. Shalon is a co-founder of AirXpanders and the chief executive officer of Shalon Ventures Research LLC., an evergreen life science and technology incubator funded by the Shalon family. In addition, Mr. Shalon has served as CEO of ThinOPTICS and currently serves as the CEO of Theracaine and WaterGURU. Mr. Shalon has more than 35 years of experience in medical device and medical product development in privately held companies such as Renew Medical, AirFlow Medical, ThinOptics, Guard Medical and Theracaine. Mr. Shalon holds an MS in Computer Science, BA in Physics, and a BS in Electrical Engineering from Washington University in St Louis, Missouri.

Classes of Directors

The Board is divided into three classes with staggered three year terms. At each annual meeting of stockholders commencing with the 2016 meeting, the directors who term expires will be eligible for re-election to serve for a three year term.

The Directors are divided into the following three classes:

Director	Class	Expiration of term
Mr. Dennis Condon & Mr. Tadmor Shalon	Class II	2017 Annual General Meeting
Mr. Barry Cheskin & Mr. Scott Dodson	Class III	2018 Annual General Meeting
Mr. Gregory Lichtwardt & Ms. Zita Peach	Class I	2019 Annual General Meeting

Executive Officers

Set forth below is biographical information for our Executive Officers. The biography for Mr. Dodson appears under “Directors” above.

Scott Murcray — Chief Financial Officer and Chief Operating Officer

Scott Murcray joined AirXpanders as Chief Financial Officer and Chief Operating Officer in June 2016. Prior to AirXpanders, Mr. Murcray served at Nanometrics Incorporated, a semiconductor equipment and services company, from 2014 to 2016 as Vice President, Finance, and was responsible for accounting and finance. Prior to joining Nanometrics, from 2011 to 2014, Mr. Murcray served at ZOLL Medical Corporation, a medical device company, as a Vice President, Finance, and was responsible for accounting, finance, information technology, and human resources. From 1994 through 2011, Mr. Murcray held various accounting and finance leadership roles at VNUS Medical Technologies, Inc., Atrenta Inc., ePeople, Inc. and Arthur Andersen LLP. Mr. Murcray holds a B.S. degree in business administration from California Polytechnic State University, San Luis Obispo, and is a certified public accountant in the state of California.

ITEM 6. EXECUTIVE COMPENSATION.

Summary Compensation Table

The following table shows the total compensation paid during the fiscal year ended December 31, 2016 to our two named executive officers: (1) our president and chief executive officer, and (2) our chief financial officer and chief operating officer.

Name and Principal Position	Salary	Option Awards[1]	Non-Equity Incentive Plan Compensation	All Others Compensation	Total
Scott Dodson[2] *President and Chief Executive Officer*	$360,422	$157,818	$ —	$ —	$ 518,240
Scott Murcray[3] *Chief Financial Officer and Chief Operating Officer*	$143,834	$219,897	$ —	$ —	$ 363,731

(1) The amounts in the "Option Awards" column reflect the aggregate grant date fair value of option awards granted for financial reporting purposes and computed in accordance with Financial Accounting Standards Board (FASB) Accounting Standard Codification (ASC) Topic 718, *Compensation — Stock Compensation.* In each case, the aggregate grant date fair value of the option awards disregards an estimate of forfeitures. A discussion of the assumptions used to determine the grant date fair value of the options may be found in "Note 12 — Stock-based Compensation" in the notes to our consolidated financial statements included elsewhere in this registration statement.

(2) Mr. Dodson was awarded an option grant for 228,500 shares of Common Stock by our Board and approved by our stockholders at the May 2016 Annual General Meeting on May 17, 2016.

(3) Mr. Murcray's salary is prorated as he commenced his employment with us effective June 6, 2016; his annualized salary for 2016 was $265,000. Mr. Murcray was awarded an initial option grant of 240,000 options consisting of 143,634 incentive stock options and 96,366 nonqualified stock options on August 15, 2016.

Outstanding Equity Awards at Fiscal Year End

The following table sets forth the number of shares covered by stock options held by each of the named executive officers as of the fiscal year ended December 31, 2016.

	Option Awards				
		Number of Securities Underlying Unexercised Options (#)			
Name	Grant Date	Exercisable	Unexercisable	Option Exercise Price ($)	Option Expiration Date
Scott Dodson	5/17/2016[1]	33,322	195,178	$ 1.93	5/16/2026
	3/13/2015[2]	39,688	57,812	$ 0.50	3/12/2025
	5/31/2013[3]	1,126,513	130,990	$ 0.30	5/30/2023
	4/17/2012[4]	367,460	—	$ 0.30	4/16/2022
	1/11/2011[5]	562,163	—	$ 0.25	1/10/2021
Scott Murcray	8/15/2016[6]	—	240,000	$ 2.64	8/14/2026

(1) This option was granted pursuant to our 2015 Equity Incentive Plan (2015 Plan) and began vesting on June 17, 2016. The shares subject to this option vest in equal monthly instalments monthly over four years.

(2) This option was granted pursuant to our 2005 Equity Incentive Plan (2005 Plan) and began vesting on March 13, 2016. The shares subject to this option vest 25% on the one year anniversary date and in equal monthly instalments monthly over the remaining three years.

(3) This option was granted pursuant to our 2005 Plan and began vesting on May 31, 2014. The shares subject to this option vest 25% on the one year anniversary date and in equal monthly instalments monthly over the remaining three years.

(4) This option was granted pursuant to our 2005 Plan and began vesting on April 17, 2013. The shares subject to this option vest 25% on the one year anniversary date and in equal monthly instalments monthly over the remaining three years.

(5) This option was granted pursuant to our 2005 Plan and began vesting on January 11, 2012. The shares subject to this option vest 25% on the one year anniversary date and in equal monthly instalments monthly over the remaining three years.
(6) This option was granted pursuant to our 2015 Plan and begins vesting on August 15, 2017. The shares subject to this option vest 25% on the one year anniversary date and in equal monthly instalments monthly over the remaining three years.

During the year ended December 31, 2016, no named executive officer exercised stock options.

Pension Benefits

We do not have any plans that provide for payments or other benefits at, following or in connection with the retirement of our employees, other than our 401(k) retirement plan which is available for all of our employees, including our named executive officers.

Non-qualified Deferred Compensation

We do not have any non-qualified defined contribution plans or other deferred compensation plan.

Termination of Employment and Change-in-Control Potential Payouts

The following table sets forth potential payouts for termination of employment and change-in-control for each of the named executive officers as of the fiscal year ended December 31, 2016.

		Not in connection with Change in Control	In connection with Change in Control
		Termination Without Cause/Good Reason ($)	Termination Without Cause For Good Reason or Due to Disability or Death ($)
Scott Dodson	Severance pay[1]	$ 186,500	$ 186,500
	Equity vesting acceleration[2]	—	260,947
	Health care benefits continuation[3]	15,597	15,597
		$ 202,097	$ 463,044
Scott Murcray	Severance pay[1]	$ 132,500	$ 132,500
	Equity vesting acceleration[2]	—	—
	Health care benefits continuation[3]	11,136	11,136
		$ 143,636	$ 146,636

(1) Each named officer is entitled to six months base salary upon termination without cause.
(2) In connection with a change in control, Mr. Dodson is entitled to 50% accelerated vesting of all unvested options and the remainder shall vest over the succeeding twelve months based on his continued employment unless he is terminated before the end of those twelve months other than for cause, in which case all unvested shares shall vest immediately. If Mr. Murcray is terminated in connection with or within 12 months of a change of control, he is entitled to 100% accelerated vesting of all unvested options. The value of the compensation is based on the difference between the exercise price of accelerated options and the market value of the underlying shares as of December 31, 2016, calculated based on the closing market price of our stock on December 31, 2016, the last trading day of our fiscal year ($2.52 per share) (calculated based upon the closing price of our CDIs on that date multiplied by three (to account for the three CDIs that represent one share of our common stock) and converted to U.S. dollars by the exchange rate on that date). Mr. Murcray's exercise price exceeded $2.52 at December 31, 2016.
(3) Each named officer is entitled to six months health continuation benefits upon termination without cause or good reason not in connection with a change in control.

Employee Benefits

Long-Term Incentives

Our equity-based long-term incentive program is designed to align executives' long-term incentives with stockholder value creation and is administered by the Board. We believe that long-term participation by our executive officers in equity-based awards is an important factor in the achievement of long-term company goals and business objectives. AirXpanders' 2005 Equity Plan (2005 Plan) was adopted initially by the Board and approved by the stockholders in March 2005. The 2005 Plan was subsequently amended

in January 2012 and May 2013 to increase the number of options and stock purchase rights reserved for issuance under the 2005 Plan. The 2005 Plan expired in March 2015 and was succeeded by the 2015 Equity Incentive Plan (2015 Plan). Previously granted equity awards that are forfeited, canceled or expired under the 2005 Plan are added back to the 2015 Plan share reserve. In addition, the 2015 Plan contains an evergreen provision which allows for an annual increase equal to 2% of the number of shares outstanding as of December 31 of the preceding calendar year from January 1, 2016 through January 1, 2025 and subject to the Board's approval. The annual increase will no longer have effect once the share reserve reaches 10% of the fully diluted capital stock less shares issuable upon exercise of outstanding equity awards.

Under our 2015 Plan, we may grant incentive stock options, non-statutory options, stock appreciation rights, restricted stock awards, restricted stock unit awards, performance stock awards, performance cash awards and other stock-based awards (equity awards) to our employees, including our named executive officers, directors and consultants. We historically made an initial award of stock options to new employees as well as annual stock option grants as part of our overall compensation program. Annual grants of options to our named executive officers, other than our chief executive officer, have been recommended by the chief executive officer, reviewed by our Nomination and Remuneration Committee and approved by our Board. Annual grants of options to our chief executive officer have been made by our Nomination and Remuneration Committee and our Board. In addition, under the ASX Listing Rules, grants to directors are subject to stockholder approval and as a result, grants to our chief executive officer who is also an executive director, are subject to stockholder approval.

The market price for our common stock since the closing of our initial public offering on the ASX on June 22, 2015 is calculated based upon the closing price of our CDIs on the date of grant of the equity award multiplied by three (to account for the three CDIs that represent one share of our common stock) and converted to U.S. dollars by the exchange rate on the date of grant. Prior to our initial public offering, our Board determined the fair market value of our common stock in good faith based upon consideration of a number of relevant factors including our financial condition, the likelihood of a liquidity event, the prices at which our convertible preferred stock was sold, the enterprise value of comparable companies, our cash needs, operating losses, market conditions, material risks to our business and valuations obtained from independent valuation firms. All equity awards to our employees, consultants and directors were granted at no less than the fair market value of our common stock as determined in good faith by our Board on the date of grant of each award. See also our discussion of stock-based compensation under "Management's Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies and Estimates."

Initial Stock Option Awards

We typically make an initial award of stock options to new executives in connection with the commencement of their employment. These grants have an exercise price equal to the fair market value of our common stock on the grant date and generally vest as to 25% of the total shares on the 12-month anniversary of the vesting date and 1/48th of the total shares on each of the 36 monthly vesting dates thereafter. The initial stock option awards are intended to provide the executive with incentive to build value in the organization over an extended period of time and to maintain competitive levels of total compensation. The size of the initial stock option award is determined based on numerous factors, including the executive's skills and experience, the executive's responsibilities, internal equity and an analysis of the practices of national and regional companies in the medical device industry similar to us.

Additional Equity Awards

In the future, and subject to any stockholder approval requirement under the ASX Listing Rules, we expect to continue to make additional equity awards as part of our overall performance management program with the intent of making such grants concurrent with an annual performance review at the beginning of each fiscal year. We intend that the annual aggregate value of these awards will be set near competitive levels for companies represented in the compensation data we review. As is the case when the amounts of base salary and initial equity awards are determined, we conduct a review of all components of the executive's compensation when determining annual equity awards to ensure that an executive's total compensation conforms to our overall philosophy and objectives.

Our stockholders approved a grant to our chief executive officer at our Annual General Meeting in May 2016. See also the table entitled "Summary Compensation" and the notes to that table below for more information on the 2016 equity incentive grants made to our named executive officers.

We do not currently have any securities ownership requirements for our named executive officers.

2015 Plan

The Board adopted and the stockholders approved the 2015 Equity Incentive Plan (the "2015 Plan") in May 2015. We have subsequently amended our 2015 Plan, with the most recent amendment occurring in May 2013, the purpose of which was to increase the number of shares available for issuance under our 2015 Plan. We intend to amend and restate our 2015 Plan in connection with

effective upon the effectiveness of this Form 10. All references herein to our 2015 Plan shall be deemed to refer to our 2015 Plan, as amended and restated, unless context requires otherwise.

Our 2015 Plan provides for the grant of incentive stock options (ISOs), nonstatutory stock options (NSOs), stock appreciation rights, restricted stock awards, restricted stock unit awards, performance-based stock awards, performance-based cash awards, and other stock awards, or collectively, awards. ISOs may be granted only to Company employees (including officers, employees of our affiliates and directors who are also employees). All other awards may be granted to our employees, including our officers, our non-employee directors and consultants and the employees and consultants of our affiliates.

Authorized Shares

The aggregate number of shares of Class A Common Stock that may be issued pursuant to stock awards under our 2015 Plan is the sum of (1) 1,500,000 shares of Class A Common Stock under our 2015 Plan, plus (2) up to 4,099,835 shares of Class A Common Stock subject to outstanding stock options or other stock awards that were granted under our 2005 Plan (as defined herein) that are forfeited, terminate, expire or are otherwise not issued. . Additionally, the number of shares of Class A Common Stock reserved for issuance under our 2015 Plan will automatically increase on January 1st of each calendar year beginning on January 1, 2016, and ending on and including January 1, 2025, in an amount equal to 2.0% of the total number of shares of capital stock outstanding on December 31st of the preceding calendar year, subject to a cap equal to 10% of the fully diluted number of shares of capital stock of the Company as of the same date. At December 31, 2016 and 2015, 5,216,327 and 4,127,900 options were vested and expected to vest with a weighted-average exercise price of $0.3775 and $0.3329 and weighted average remaining contractual life of 6.60 and 6.57 years, respectively. The weighted average grant date fair value per share of options granted during the years ended December 31, 2016 and 2015 was $0.8553 and $0.3439, respectively. The fair value of shares vested during the years ended December 31, 2016 and 2015 was $226,611 and $96,344, respectively. The weighted average exercise price of options exercised during the year ended December 31, 2016 and 2015 was $0.25 and $0.18, respectively. The intrinsic value of the options exercised during the year ended December 31, 2016 and 2015 was $98,407 and $5,343, respectively.

Shares subject to stock awards granted under our 2015 Plan that expire or terminate without being exercised in full, or that are paid out in cash rather than in shares, do not reduce the number of shares available for issuance under our 2015 Plan. Additionally, shares become available for future grant under our 2015 Plan if they were issued under stock awards under our 2015 Plan if we repurchase them or they are forfeited. This includes shares used to pay the exercise price of a stock award or to satisfy the tax withholding obligations related to a stock award.

Plan Administration

The Board, or a duly authorized committee of the Board, will administer our 2015 Plan. The Board may also delegate to one or more of the Company's officers the authority to (a) designate employees (other than officers or directors) to receive specified stock awards and (b) determine the number of shares subject to such stock awards. Under our 2015 Plan, the Board has the authority to determine and amend the terms of awards, including:

- recipients;
- the exercise, purchase or strike price of stock awards, if any;
- the number of shares subject to each stock award;
- the fair market value of a share of our Class A Common Stock;
- the vesting schedule applicable to the awards, together with any vesting acceleration; and
- the form of consideration, if any, payable upon exercise or settlement of the award.

Under our 2015 Plan, the Board also generally has the authority to effect, with the consent of any adversely affected participant and subject to applicable listing rules:

- the reduction of the exercise, purchase or strike price of any outstanding award;
- the cancellation of any outstanding stock award and the grant in substitution therefor of other awards, cash or other consideration; or
- any other action that is treated as a repricing under generally accepted accounting principles.

Section 162(m) Limits

At such time as necessary for compliance with Section 162(m) of the Code, no participant may be granted stock awards covering more than 2,000,000 shares of our Class A Common Stock under our 2015 Plan during any calendar year pursuant to stock options, stock

appreciation rights and other stock awards whose value is determined by reference to an increase over an exercise price or strike price of at least 100% of the fair market value of our Class A Common Stock on the date of grant. Additionally, under our 2015 Plan, in a calendar year, no participant may be granted a performance stock award covering more than 2,000,000 shares of our Class A Common Stock or a performance cash award having a maximum value in excess of $2,000,000. These limitations are designed to allow the Company to grant compensation that will not be subject to the $1,000,000 annual limitation on the income tax deductibility of compensation paid to a covered executive officer imposed by Section 162(m) of the Code.

Stock Options

ISOs and NSOs are granted pursuant to stock option agreements adopted by the plan administrator. The plan administrator determines the exercise price for stock options, within the terms and conditions of our 2015 Plan, provided that the exercise price of a stock option generally cannot be less than 100% of the fair market value of our Class A Common Stock on the date of grant. Options granted under our 2015 Plan vest at the rate specified in the stock option agreement as determined by the plan administrator. The maximum number of shares of our Class A Common Stock that may be issued upon the exercise of ISOs under our 2015 Plan is 12,000,000 shares.

Restricted Stock Unit Awards

Restricted stock unit awards are granted pursuant to restricted stock unit award agreements adopted by the plan administrator. Restricted stock unit awards may be granted in consideration for any form of legal consideration that may be acceptable to our Board and permissible under applicable law. A restricted stock unit award may be settled by cash, delivery of stock, a combination of cash and stock as deemed appropriate by the plan administrator or in any other form of consideration set forth in the restricted stock unit award agreement. Additionally, dividend equivalents may be credited in respect of shares covered by a restricted stock unit award. Except as otherwise provided in the applicable award agreement, restricted stock units that have not vested will be forfeited once upon the participant's continuous service ends for any reason.

Restricted Stock Awards

Restricted stock awards are granted pursuant to restricted stock award agreements adopted by the plan administrator. A restricted stock award may be awarded in consideration for cash, check, bank draft or money order, past services to us or any other form of legal consideration (including future services) that may be acceptable to our Board and permissible under applicable law. The plan administrator determines the terms and conditions of restricted stock awards, including vesting and forfeiture terms. If a participant's service relationship with us ceases for any reason, we may receive any or all of the shares of Class A Common Stock held by the participant that have not vested as of the date the participant terminates service with us through a forfeiture condition or a repurchase right.

Stock Appreciation Rights

Stock appreciation rights are granted pursuant to stock appreciation grant agreements adopted by the plan administrator. The plan administrator determines the purchase price or strike price for a stock appreciation right, which generally cannot be less than 100% of the fair market value of our Class A Common Stock on the date of grant. A stock appreciation right granted under our 2015 Plan vests at the rate specified in the stock appreciation right agreement as determined by the plan administrator.

Performance Awards.

Our 2016 Plan permits the grant of performance-based stock and cash awards that may qualify as performance-based compensation that is not subject to the $1,000,000 limitation on the income tax deductibility of compensation paid to a covered executive officer imposed by Section 162(m) of the Code. Our compensation committee may structure such awards so that the stock or cash will be issued or paid pursuant to such award only following the achievement of certain pre-established performance goals during a designated performance period.

The performance goals that may be selected include one or more of the following: (1) earnings (including earnings per share and net earnings); (2) earnings before interest, taxes and depreciation; (3) earnings before interest, taxes, depreciation and amortization; (4) earnings before interest, taxes, depreciation, amortization and legal settlements; (5) earnings before interest, taxes, depreciation, amortization, legal settlements and other income (expense); (6) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense) and stock-based compensation; (7) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense), stock-based compensation and changes in deferred revenue; (8) total stockholder return; (9) return on equity or average stockholder's equity; (10) return on assets, investment, or capital employed; (11) stock price; (12) margin (including gross margin); (13) income (before or after taxes); (14) operating income; (15) operating income after taxes; (16) pre-tax profit; (17) operating cash flow; (18) sales or revenue targets; (19) increases in revenues or product revenues; (20) expenses and cost

reduction goals; (21) improvement in or attainment of working capital levels; (22) economic value added (or an equivalent metric); (23) market share; (24) cash flow; (25) cash flow per share; (26) share price performance; (27) debt reduction; (28) implementation or

completion of projects or processes; (29) employee retention; (30) stockholders' equity; (31) capital expenditures; (32) debt levels; (33) operating profit or net operating profit; (34) workforce diversity; (35) growth of net income or operating income; (36) billings; (37) bookings; (37) employee retention; (38) initiation or completion of phases of clinical trials and/or studies by specified dates; (39) patient enrollment rates; (40) budget management; (41) regulatory body approval with respect to products, studies and/or trials; (42) commercial launch of products; and (43) to the extent that an award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by our board of directors.

The performance goals may be based on company-wide performance or performance of one or more business units, divisions, affiliates, or business segments, and may be either absolute or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by our board of directors or compensation committee (as applicable) (i) in the award agreement at the time the award is granted or (ii) in such other document setting forth the performance goals at the time the goals are established, our board of directors will appropriately make adjustments in the method of calculating the attainment of performance goals as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of any "extraordinary items" as determined under generally accepted accounting principles; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any business divested by us achieved performance objectives at targeted levels during the balance of a performance period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of our common stock by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock-based compensation and the award of bonuses under our bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under generally accepted accounting principles; (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles; (12) to exclude the effect of any other unusual, non-recurring gain or loss; (13) to exclude the effects of the timing of acceptance for review and/or approval of submissions to the Food and Drug Administration or any other regulatory body and (14) to exclude the effects of entering into or achieving milestones involved in licensing joint ventures. In addition, our board of directors retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of the performance goals and to define the manner of calculating the performance criteria we select to use for such performance period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the award agreement or the written terms of a performance cash award.

Other Stock Awards

Our 2015 Plan administrator may grant other stock awards based in whole or in part by reference to our Class A Common Stock. Our 2015 Plan administrator will set the number of shares under the stock award and all other terms and conditions of such stock awards.

Changes to Capital Structure

In the event that there is a specified type of change in our capital structure, such as a stock split or recapitalization, appropriate adjustments will be made to (1) the class and maximum number of shares reserved for issuance under our 2015 Plan, (2) the class and maximum number of shares by which the share reserve may increase automatically each year, (3) the class and maximum number of shares that may be issued upon the exercise of ISOs, (4) the class and maximum number of shares subject to stock awards that can be granted in a calendar year (as established under our 2015 Plan pursuant to Section 162(m) of the Code), and (6) the class and number of shares and exercise price, strike price, or purchase price, if applicable, of all outstanding stock awards.

Corporate Transactions

Our 2015 Plan provides that in the event of certain specified significant corporate transactions including: (1) a sale of all or substantially all of our assets, (2) the sale or disposition of at least 90% of our outstanding securities, (3) the consummation of a merger or consolidation where we do not survive the transaction and (4) the consummation of a merger or consolidation where we do survive the transaction but the shares of our Class A Common Stock outstanding prior to such transaction are converted or exchanged into other property by virtue of the transaction, each outstanding award will be treated as the plan administrator determines unless otherwise provided in an award agreement or other written agreement between us and the award holder or unless otherwise provided in the applicable listing rules or stock exchange. The administrator may take one of the following actions with respect to such awards:

- arrange for the assumption, continuation or substitution of a stock award by a successor corporation;
- arrange for the assignment of any reacquisition or repurchase rights held by us to a successor corporation;
- accelerate the vesting, in whole or in part, of the stock award and provide for its termination prior to the transaction;

- arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by us; or

- cancel or arrange for the cancellation of the stock award before the transaction in exchange for a cash payment, if any, as determined by our Board; or
- cancel or arrange for the cancellation of the stock award, to the extent not vested or exercised prior to the effective time of the transaction, in exchange for a payment, in the form determined by our board of directors, equal to the excess, if any, of the value of the property the participant would have received upon the exercise of the stock awards immediately before the transaction over any exercise price payable by the participant in connection with the exercise.

The plan administrator is not obligated to treat all stock awards or portions of stock awards, even those that are of the same type, in the same manner.

In the event of a change in control, awards granted under our 2015 Plan will not receive automatic acceleration of vesting and/or exercisability, although this treatment may be provided for in an award agreement. Under our 2015 Plan, a change in control generally will be deemed to occur in the event: (i) the acquisition by any a person or company of more than 50% of the combined voting power of our then outstanding stock; (ii) a merger, consolidation, or similar transaction in which our stockholders immediately before the transaction do not own, directly or indirectly, more than 50% of the combined outstanding voting power of the surviving entity or the parent of the surviving entity; (iii) a sale, lease, exclusive license or other disposition of all or substantially all of our assets other than to an entity more than 50% of the combined voting power of which is owned by our stockholders; or (iv) an unapproved change in the majority of our Board.

Transferability

A participant generally may not transfer stock awards under our 2015 Plan other than by will, the laws of descent and distribution, or as otherwise provided under our 2015 Plan.

Amendment or Termination

Our Board has the authority to amend, suspend, or terminate our 2015 Plan, provided that such action does not materially impair the existing rights of any participant without such participant's written consent. Certain material amendments also require the approval of our stockholders. No awards may be granted after the tenth anniversary of the date our Board adopted our 2015 Plan. No awards may be granted under our 2015 Plan while it is suspended or after it is terminated.

Australian Sub-Plan

We have adopted an Australian sub-plan to the 2015 Plan, applicable to Australian resident directors and employees, so that those directors and employees can benefit from tax deferral under the Australian employee share scheme tax regime (where applicable).

2005 Plan

General

Our Board adopted and our stockholders approved our 2005 Equity Incentive Plan (the "2005 Plan") in March 2005. The 2005 Plan was amended in January 2012 and May 2013 to increase the number of options and stock purchase rights available for grant under the 2005 Plan. Our 2005 Plan expired by its terms on March 16, 2015; however, awards outstanding under our 2005 Plan continue in full effect in accordance with their existing terms.

Share Reserve

As of May 2013, we have reserved 6,170,159 shares of our common stock for issuance under our 2005 Plan. As of March 15, 2017 options to purchase 3,415,257 shares of common stock, at exercise prices ranging from $0.05 to $0.50 per share, or a weighted-average exercise price of $0.3011 per share, were outstanding under our 2005 Plan.

Administration

Our Board has administered our 2005 Plan since its adoption. Our Board has full authority and discretion to take any actions it deems necessary or advisable for the administration of our 2005 Plan. Our Board may modify, extend or renew outstanding options.

Types of Awards

Our 2005 Plan provides for both the award or sale of shares of our common stock and for the grant of incentive stock options and nonstatutory stock options to purchase shares of our common stock to employees, non-employee members of our Board and consultants.

Options

The exercise price of options granted under our 2005 Plan may not be less than 100% of the fair market value of our common stock on the grant date. Options expire at the time determined by the administrator, but in no event more than ten years after they are granted, and generally expire earlier if the optionee's service terminates.

Changes in Capitalization and Corporate Transactions

If the Board determines that any dividend or other distribution, recapitalization, stock split, reverse stock split, reorganization, merger, sale or other disposition of all or substantially all of the Company's assets, or other similar corporate transaction or event, affects the common stock such that an adjustment is determined by the Board to be appropriate to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the 2005 Plan or with respect to any options or stock purchase rights, the Board may take any one or more of the following actions with respect to outstanding options or stock purchase rights, subject to compliance with all relevant legal requirements:

- adjust the number and kind of shares subject to outstanding options or stock purchase rights;
- adjust the grant or exercise price of any options or stock purchase rights;
- provide for the purchase or replacement of the options or stock purchase rights for cash or other rights or property selected at the Board's discretion;
- provide that all options or stock purchase rights will be immediately exercisable;
- provide that all outstanding options or stock purchase rights will be assumed by or substituted for similar incentives of the successor or survivor corporation; or
- provide for the termination of all options or stock purchase rights upon consummation of the relevant transaction, provided the holders are given the right to exercise such incentives for a 30-day specified period preceding the effective date of such transaction.

If the Company undergoes an acquisition (as defined in the 2005 Plan), then any surviving or acquiring entity or corporation may assume outstanding options or stock purchase rights or may substitute similar stock awards for those outstanding options or stock purchase rights. In the event that options or stock purchase rights are not so assumed or substituted, then with respect to (i) options or stock purchase rights held by participants whose service has not terminated prior to such event, the vesting of such options or stock purchase rights will be accelerated and made fully exercisable and all restrictions on such options or stock purchase rights will lapse at least ten (10) days prior to the closing of the acquisition (and will terminate if not exercised prior to such closing); and (ii) any other outstanding options or stock purchase rights will be terminated if not exercised prior to the closing of the acquisition.

Transferability

A participant may not transfer stock awards under our 2005 Plan other than by will, the laws of descent and distribution.

Plan Amendment or Termination

Our Board has the authority to amend, suspend or terminate our 2005 Plan, provided that such action is approved by our stockholders to the extent stockholder approval is necessary and that such action does not impair the existing rights of any participant without such participant's written consent. As described above, our 2005 Plan expired by its terms on March 16, 2015.

Employment Agreements and Offer Letters

The following section summarizes the employment agreements and offer letters we have entered into with our named executive officers. For purposes of the employment agreements and offer letters, we use the following terms: (i) "cause" to mean termination of employment by us for any of the following reasons: (1) willful failure to perform one's duties and responsibilities to us or a deliberate violation of our policy, (2) commission of any act of fraud, embezzlement, dishonesty or any willful misconduct that has caused or is reasonably expected to result in material injury to us, (3) unauthorized use or disclosure of any proprietary information or trade secrets of ours or any other party to whom one owes an obligation of nondisclosure as a result of the employee's relationship with us or any other party to whom they owe an obligation of nondisclosure as a result of their relationship with us or (4) willful breach of any of the employee's obligations under any written agreement or covenant with us. For purposes of the employment agreements and offer letters, we use the following terms: (i) "change in control" to mean (1) a sale of all or substantially all our assets, (2) any merger, consolidation, or other business combination transaction of us with or into another corporation, entity or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of us outstanding immediately prior to such transaction continue to

hold (either by such shares remaining outstanding or by being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of us (or the surviving

entity) outstanding immediately after such transaction or (3) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of then outstanding shares of capital stock of us other than the sale of equity securities sold for the purpose of raising capital.

Scott Dodson

In September 2010, we entered into an offer letter with Scott Dodson to serve as our president and chief executive officer. Mr. Dodson's agreement provided for, among other things: (i) an annual base salary of $310,000, subject to annual review, and which has subsequently been increased to $373,000; (ii) an initial grant of incentive options pursuant to our 2005 Plan such that his interest in AirXpanders amounted to 5.5% of our then outstanding fully diluted stock on his hire date; and (iii) certain other benefits including health insurance and travel and other expense reimbursements under our expense policy. Furthermore, 50% of Mr. Dodson's outstanding stock options will vest immediately and be exercisable upon a change of control and the remainder of Mr. Dodson's unvested shares shall vest over the succeeding twelve months based on his continued employment unless he is terminated before the end of those twelve months other than for cause, in which case all unvested shares shall vest immediately. If Mr. Dodson's employment is terminated by us other than for cause, upon execution of a release of claims in a form reasonably acceptable to us, he will receive six months of his then current base salary payable at our regular payroll periods. In addition, we shall make payments on his behalf for continuation of premiums for health insurance under Federal or State COBRA programs.

Mr. Dodson's employment may be terminated at any time, with or without cause, with or without notice, at the option of either AirXpanders or Mr. Dodson.

Scott Murcray

In June 2016, we entered into an offer letter with Scott Murcray to serve as our chief financial officer and chief operating officer. Mr. Murcray's agreement provides for, among other things: (i) an annual base salary of $265,000, subject to annual review, and (ii) stock options. Furthermore, all of Mr. Murcray's outstanding stock options will vest immediately upon a change of control.

Mr. Murcray's employment may be terminated at any time, with or without cause, with or without notice, at the option of either AirXpanders or Mr. Murcray. In the event we terminate Mr. Murcray's employment without cause, we will pay Mr. Murcray severance equal to (i) six months of base salary continuance and (ii) six months continuation of all health benefits being provided by us as of the date of termination. In the event we terminate Mr. Murcray's employment without cause, as a result of or within 12 months of a change of control, 100% of all Mr. Murcray's unvested options shall be deemed immediately vested and exercisable. Such benefits are subject to the execution of an acceptable release of claims form by Mr. Murcray within the prescribed 45 days.

NEO Change in Control Option Vesting Provisions

Subsequent to the IPO, in order to comply with ASX requirements, options granted to NEOs contain the following vesting provisions in the event of a change in control:

- 50% of unvested options shall immediately vest; and
- Remaining options shall vest equally each month over the following 12 months, provided the NEO makes himself reasonably available to provide services to the acquiring company.

Director Compensation

The following table shows the total compensation paid during the fiscal year ended December 31, 2016 to each of our non-executive directors, which does not include Mr. Dodson, who does not receive compensation for his service as a director:

	Fees earned or paid in cash ($)	Option Awards[1][2] ($)	Total ($)
Barry Cheskin[3]	$ 124,000	$ 28,686	$148,686
Dennis Condon[4]	$ 16,875	$ 7,623	$ 24,498
Gregory Lichtwardt[5]	$ 24,375	$ 23,592	$ 47,967
Zita Peach[6]	$ 13,750	$ 23,592	$ 37,342
Tadmor Shalon[7]	$ —	$ 7,623	$ 7,623

(1) The amounts in the "Option Awards" column reflect the aggregate grant date fair value of option awards granted for financial reporting purposes and computed in accordance with FASB ASC Topic 718, *Compensation — Stock Compensation.* A discussion of the assumptions used to determine the grant date fair value of the options may be found in "Note 12 — Stock-based Compensation" in the notes to our consolidated financial statements included elsewhere in this registration statement.

(2) On May 17, 2016, Mr. Cheskin received an award of 42,900 stock options; Mr. Condon and Mr. Shalon each received an award of 11,400 stock options and; Mr. Lichtwardt and Ms. Peach each received an initial award of 35,000 stock options. The stock options granted to the continuing non-executive directors, Mr. Cheskin, Mr. Condon and Mr. Shalon, vest 1/36th each month on the monthly anniversary date over three years. The stock options granted to the two new non-executive directors, Mr. Lichtwardt, and Ms. Peach, vest 1/3rd on the first annual anniversary date and vest 1/36th each month on the monthly anniversary date over the remaining two years.

(3) At December 31, 2016, Mr. Cheskin had 386,604 outstanding options to purchase shares of Common Stock. Mr. Cheskin received $119,000 in cash compensation for his service as Chairman of the Board an additional $5,000 for serving as chair of the Nomination and Remuneration Committee through May 2016.
(4) At December 31, 2016, Mr. Condon had 125,461 outstanding options to purchase shares of Common Stock.
(5) At December 31, 2016, Mr. Lichwardt had 35,000 outstanding options to purchase shares of Common Stock. Mr. Lichtwardt received cash compensation for three quarters of board service and serving as chair of the Audit and Risk Committee.
(6) At December 31, 2016, Ms. Peach had 35,000 outstanding options to purchase shares of Common Stock. Ms. Peach received cash compensation for two quarters of board service and for serving as chair of the Nomination and Remuneration Committee.
(7) At December 31, 2016, Mr. Shalon had 125,461 outstanding options to purchase shares of Common Stock.

Director Compensation Policy

Under our Bylaws, the directors decide the total amount to be paid to all directors (excluding the salary of the executive director) as compensation for their service as a director of AirXpanders. However, under the ASX Listing Rules, the total amount paid to all directors for their services must not exceed in aggregate in any fiscal year the amount fixed by AirXpanders at its annual general meeting. This amount has been fixed at $300,000.

In April 2017, the Board of Directors approved the annual cash compensation levels for non-executive board members and committee chairs as follows:

- Chairman of the Board — $103,000 (an increase from $100,000);
- Non-executive independent director — $27,500 (an increase from $22,500);
- Audit and Risk Committee Chair — an additional $10,000 (no change from prior amount); and
- Nomination and Remuneration Committee Chair — an additional $10,000 (an increase from $5,000).

The payments will take effect from the day of the next annual general meeting in May 2017. All Board members may be reimbursed for travel and other expenses incurred in attending to AirXpanders' affairs.

As a result of our listing on the ASX, all equity grants to directors are subject to shareholder approval under the ASX Listing Rules. On May 17, 2016, the shareholders approved the following grants to our non-executive board members: Mr. Cheskin received an award of 42,900 stock options; Mr. Condon and Mr. Shalon each received an award of 11,400 stock options and; Mr. Lichtwardt and Ms. Peach each received an initial award of 35,000 stock options.

Unless otherwise specified by our Board or the Remuneration Committee at the time of grant, all options granted under this policy shall have an exercise price equal to the fair market value of AirXpanders' common stock as determined pursuant to the 2015 Plan on the date of grant.

Nomination and Remuneration Committee Interlocks and Insider Participation

Our Nomination and Remuneration Committee consists of three (3) non-executive directors: Ms. Peach (Chair), Mr. Cheskin and Mr. Condon. No member of the Nomination and Remuneration Committee is, or was formerly, one of our officers or employees. No interlocking relationship exists between our Board or our Nomination and Remuneration Committee and the board of directors or Nomination and Remuneration Committee of any other company, nor has any interlocking relationship existed in the past.

ITEM 7. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE.

There have been no transactions since January 1, 2014, to which we have been a party, in which the amount involved exceeded or will exceed $120,000, and in which any of our directors, executive officers or beneficial owners of more than 5% of our preferred stock or common stock, or an affiliate or immediate family member thereof, had or will have a direct or indirect material interest, other than compensation, termination and change-in-control arrangements, which are described under "Executive Compensation" and as described below.

Certain Relationships and Related Party Transactions

Mrs. Lynae Dodson, the wife of Mr. Dodson, chief executive officer and director, owns and operates a marketing consulting firm, Bridge Marketing. Bridge Marketing manages trade shows and social media for AirXpanders and during the years ended December 31, 2016, 2015 and 2014, received payments of $0.2 million, $0.2 million and $0.1 million for marketing support services rendered to AirXpanders.

Convertible Note Financing

In February 2015, AirXpanders issued: (a) convertible promissory notes with an aggregate principal amount of $1.3 million to the Vivo Entities – at that time Albert Cha was a member of our Board and was affiliated with, and had a financial interest in, certain entities affiliated with the Vivo Venture Fund; (b) convertible promissory notes with an aggregate principal amount of $0.2 million to the Prolog Entities – at that time Brian L. Clevinger was a member of our Board and was affiliated with, and had a financial interest in, certain entities affiliated with the Prolog Entities; and (c) convertible promissory notes with an aggregate principal amount of $1.1 million to the GBS Entities – at that time Brigitte Smith was a member of our Board and was affiliated with, and had a financial interest in, certain entities affiliated with the GBS Entities. The convertible promissory notes bore an interest rate of 7% and were convertible into shares of Common Stock issuable in connection with the IPO.

Initial Public Offering

In June 2015, in connection with our IPO, we issued: (a) 1,184,656 shares of our Common Stock in cancellation of approximately $1.4 million of convertible promissory notes and 1,157,571 shares of our Common Stock for an aggregate purchase price of $1.3 million, to entities affiliated with Vivo Capital (such affiliated entities together with any successor entities thereto, the Vivo Entities) – at that time Albert Cha was a member of our Board and was affiliated with, and had a financial interest in, certain entities affiliated with the Vivo Entities; (b) 178,397 shares of our Common Stock in cancellation of approximately $0.2 million of convertible promissory notes issued in the Convertible Note Financing and 174,318 shares of its Common Stock for an aggregate purchase price of $0.2 million, to entities affiliated with Prolog Capital (such affiliated entities together with any successor entities thereto, the Prolog Entities) – at that time Brian L. Clevinger was a member of AirXpanders Board of Directors and was affiliated with, and had a financial interest in, certain entities affiliated with the Prolog Entities; and (c) 924,052 shares of its Common Stock in cancellation of approximately $1.1 million of convertible promissory notes issued in the Convertible Note Financing and 905,637 shares of its Common Stock for an aggregate purchase price of $1.0 million, to entities affiliated with GBS Venture Partners (such affiliated entities together with any successor entities thereto, the GBS Entities) – at that time Brigitte Smith was a member of AirXpanders Board of Directors and was affiliated with, and had a financial interest in, certain entities affiliated with the GBS Entities.

Policies and Procedures for Review and Approval of Related Party Transactions

The Audit and Risk Committee is responsible for reviewing and approving all transactions in which AirXpanders is a participant and in which parties related to AirXpanders, including executive officers, directors, and certain other persons whom the board determines may be considered related parties of AirXpanders (for the purposes of Chapter 2E of the *Australia Corporations Act 2001*), have or will have a material direct or indirect interest; and reporting to the Board on the matters above, including specific material risks identified.

Potential direct or indirect conflicts of interest of employees or those acting on behalf of AirXpanders (or their family, relatives, friends or agents) should be avoided. If an employee is concerned that they have a potential conflict of interest they should disclose and discuss the matter with, and seek direction from, their manager or the chief executive officer. An employee should report any potential or actual conflict of interests that they become aware of to their manager or the chief executive officer.

Corporate Governance

Our Board currently consists of six members: Barry Cheskin; Dennis Condon; Scott Dodson; Gregory Lichtwardt; Zita Peach and Tadmor Shalon. Our Board has determined that all of our directors, other than Mr. Dodson, are "independent." We consider that a director is an "independent" director where that director is free from any business or other relationship that could materially interfere, or be perceived to interfere with, the independent exercise of the director's judgment. While we are not currently seeking a listing on NASDAQ or any other U.S. securities exchange and do not intend to do so in the foreseeable future, we have assessed the independence of our directors with respect to the definition of independence prescribed by NASDAQ and the SEC. Although we may seek a listing on NASDAQ in the future, there is no guarantee that we will do so or that we will achieve a listing on NASDAQ or any other exchange in any particular timeframe or at all.

ITEM 8. LEGAL PROCEEDINGS.

From time to time we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. We are not presently a party to any legal proceedings that, if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, financial condition or cash flows. Regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources and other factors.

ITEM 9. MARKET PRICE OF AND DIVIDENDS ON THE REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS.

Market Information

Our CDIs, each representing one-third of one share of our common stock, have been listed on the Australian Securities Exchange under the trading symbol "AXP" since June 22, 2015. Prior to such time there was no public market for our securities. There is no principal market in the U.S. for our CDIs or shares of our common stock. Our high and low sales prices on the ASX for the respective periods are shown below, both in Australian dollars per CDI and in U.S. dollars per share of common Stock. All currency conversions are based on the prevailing Australian dollar to U.S. dollar exchange rate applicable on the relevant date as reported by the Reserve Bank of Australia.

Period	High per CDI (A$)	Low per CDI (A$)	High per share of common stock (US$)	Low per share of common stock (US$)
Fiscal Year 2017:				
First Quarter	1.27	0.73	2.78	1.68
Fiscal Year 2016:				
First Quarter	1.34	1.02	2.83	2.17
Second Quarter	1.15	0.78	2.66	1.74
Third Quarter	1.49	0.90	3.40	2.03
Fourth Quarter	1.45	0.99	3.34	2.22
Fiscal Year 2015:				
Second Quarter	0.59	0.50	1.37	1.13
Third Quarter	0.87	0.48	1.92	1.07
Fourth Quarter	1.07	0.71	2.34	1.52

On March 15, 2017, the last reported sale price of our CDIs was A$0.89 per CDI, or $2.02 per share of common stock.

As of December 31, 2016, 7,293,394 of our shares were subject to outstanding options and warrants to purchase shares of common stock.

Rule 144

In general, under Rule 144 under the Securities Act of 1933, as amended, or the Securities Act, a person who acquires our common stock in a transaction not registered under the Securities Act and has beneficially owned such shares for at least one year would be entitled to sell within any three-month period those shares subject to certain restrictions, including volume and manner of sale restrictions.

Under Rule 144(b) under the Securities Act, a person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale, and who has beneficially owned the shares proposed to be sold for at least one year, is entitled to sell the shares without complying with the volume and manner of sale restrictions of Rule 144.

We believe that approximately 95,335,476 shares of our common stock outstanding were eligible for resale under Rule 144 as of March 15, 2017, subject to the volume and manner of sale restrictions thereof.

Escrow

As of March 15, 2017, the following securities were subject to ASX-mandated or voluntary escrow (of both) until June 18, 2017:

Security Description	ASX-mandated Escrow	Voluntary Escrow
Shares of Common Stock	827,758	11,005,743
Options to purchase Common Stock	2,856,452	114,441
Warrants to purchase Common Stock	—	37,039

Holders

As of March 15, 2017 we had 95,854,584 shares of our Common Stock issued and outstanding with approximately 2,188 holders of record. The holders included CHESS Depositary Nominees Pty Limited, which held 83,419,914 shares of our Common Stock in the form of CDIs on behalf of the CDI holders; there were approximately 2,136 registered owners of our CDIs on March 15, 2017. There were no shares of Class B common stock issued or outstanding as of March 15, 2017.

Dividends

During 2016, 2015 and 2014 we did not declare or pay any dividends on our common stock and do not currently anticipate declaring or paying dividends on our common stock in the foreseeable future. We currently intend to retain all of our future earnings, if any, to finance the operation and expansion of our business. Any future determination relating to our dividend policy will be made at the discretion of the Board and will depend on a number of factors, including future earnings, capital requirements, financial conditions, future prospects, contractual restrictions and covenants and other factors that the Board may deem relevant.

Equity Compensation Plan Information

The following table provides certain aggregate information with respect to all of the Company's equity compensation plans in effect as of December 31, 2016.

Plan Category	Options, Warrants and Rights Available for Grant[2]	Exercise Price per Share	Number of Options Outstanding[1]
Equity compensation plans approved by security holders	7,293,394	$ 0.92	1,600,878
Equity compensation plans not approved by security holders	—	—	—
Total	7,293,394	$ 0.92	1,600,878

(1) Consists of 1,600,878 shares of our common stock available for issuance under our 2015 Equity Incentive Plan and no shares of our common stock available for future issuance under our 2005 Equity Incentive Plan which was superseded by our 2015 Equity Incentive Plan.

(2) Includes options to purchase 6,956,580 shares of our common stock issued under our 2015 Equity Incentive Plan and warrants to purchase 336,814 shares of our common stock.

Summary Description of the Company's Non-Stockholder Approved Equity Compensation Plans

None.

ITEM 10. RECENT SALES OF UNREGISTERED SECURITIES.

Since April 30, 2014, we have issued the following securities that were not registered under the Securities Act:

1. From April 30, 2014 to April 30, 2017, we granted stock options to purchase an aggregate of 291,626 shares of common stock at exercise prices ranging from $0.12 to $0.50 per share to a total of 29 employees, consultants and directors under our 2005 Equity Incentive Plan and we granted stock options to purchase an aggregate of 2,427,936 shares of common stock at exercise prices ranging from $1.66 to $2.92 per share to a total of 93 employees, consultants and directors under our 2015 Equity Incentive Plan. Of these options, 10,583 shares have been exercised for cash consideration in the aggregate amount of $1,270, options to purchase 116,987 shares have been cancelled without being exercised and options to purchase 2,591,992 shares remain outstanding.

2. On June 22, 2015, we issued 29,629,654 shares of Common Stock in connection with an initial public offering (IPO) on the Australian Securities Exchange (ASX), a concurrent private placement under Regulation D of the Securities Act (or

Concurrent Placement) and the conversion of convertible bridge notes payable and related accrued interest. We raised a total of approximately $30.1 million, net of issuance costs of approximately $2.9 million. Of this amount, $25.1 million were net cash proceeds directly from the IPO, and $5.0 million were cash proceeds from the Concurrent Placement. In connection with the IPO, all of our existing shares of preferred stock were converted into common stock. Our lead manager was Canaccord Genuity (Australia) Limited.

3. In June 2016, we issued 8,771,930 shares of Common Stock in connection with an equity offering on the ASX. Our cash proceeds were approximately $14.2 million, net of issuance costs of approximately $0.7 million. Our lead manager was Canaccord Genuity (Australia) Limited.

4. In February 2017, we issued 16,304,348 shares of Common Stock in connection with an equity offering on the ASX. We raised a total of $34.1 million, net of issuance costs of approximately $1.5 million. Our lead manager was Canaccord Genuity (Australia) Limited.

The offers, sales and issuances of the securities described in paragraph 1 above were deemed to be exempt from registration under the Securities Act under Rule 701 promulgated under the Securities Act as offers and sale of securities pursuant to certain compensatory benefit plans and contracts relating to compensation in compliance with Rule 701.

The offers, sales, and issuances of the securities described in paragraphs 2 and 3 above were deemed to be exempt from registration under the Securities Act in reliance on Section 4(2) of the Securities Act or Regulation D promulgated thereunder as transactions by an issuer not involving a public offering or Regulation S as an offering made outside the United States. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions was an accredited or sophisticated person and had adequate access, through employment, business or other relationships, to information about us.

ITEM 11. DESCRIPTION OF REGISTRANT'S SECURITIES TO BE REGISTERED.

The following description of our capital stock does not purport to be complete and is subject in all respects to applicable Delaware law and to the provisions of our certificate of incorporation, and bylaws, copies of which have been filed as exhibits to the Registration Statement.

We are registering on this registration statement only our common stock, the terms of which are described below. However, because our preferred stock will remain outstanding following the effectiveness of this registration statement, we also describe below the terms of our preferred stock to the extent such terms qualify the rights of our common stock.

Common Stock

Outstanding Shares. Our certificate of incorporation provides that an aggregate of 310,000,000 shares of AirXpanders common stock, par value $0.001 per share, are authorized for issuance, of which 200,000,000 of which are Class A Common Stock and 100,000,000 of which are Class B Common Stock. Each share of Common Stock entitles the holder thereof to one vote on each matter submitted to the stockholders of the Company for their vote. Except as required by law, the Class B Common Stock shall not be entitled to any voting rights or to share in any dividends or other distributions of cash, property or shares of the corporation. In connection with our IPO certain of our stockholders were required by the ASX to enter into an escrow agreement under which the stockholder agreed, among other things, to certain restrictions and prohibitions from engaging in transactions for a period of time. The Common Stock shall automatically and without further action be converted into shares of Class B Common Stock, on a one-for-one basis, if the Board of Directors determines, in its sole discretion, that the stockholder breached or violated any term of such stockholder's escrow arrangement or breached the Official Listing Rules of the ASX relating to the restricted Common Stock. Any shares of Common Stock converted to Class B Common Stock shall automatically and without further action be converted back into shares of Common Stock, on a one-for-one basis, upon the earlier to occur of the expiration of the escrow period or the breach of the Official Listing Rules of the ASX relating being remedied.

As of March 15, 2017, 95,858,584 shares of common stock and the following options to purchase common stock were issued and outstanding:

- 5,788,940 shares of our common stock issuable upon the exercise of stock options outstanding as of March 15, 2017 at a weighted average exercise price of $0.48 per share.

The following is a summary of the material rights of our common stock as set forth in its certificate of incorporation and bylaws.

Transfer Agent. The transfer agent and registrar for our common stock is Computershare Trust Company, N.A. Its address is 250 Royal Street, Canton, Massachusetts 02021.

Voting Rights. Each holder of common stock is entitled to one vote for each share of common stock held on all matters submitted to a vote of the stockholders, including the election of directors. The certificate of incorporation and by-laws do not provide for cumulative voting rights in connection with election of directors unless, at the time of such election, AirXpanders is subject to Section 2115(b) of the California General Corporation Law.

Dividends. Subject to preferences that may be applicable to any then outstanding preferred stock, the holders of outstanding shares of common stock may receive dividends, if any, as may be declared from time to time by the Board of Directors out of legally available funds. AirXpanders has never issued a dividend on shares of its common stock and has no intention to do so in the future.

Liquidation. In the event of liquidation, dissolution or winding up of AirXpanders, the assets legally available for distribution shall be distributed ratably to the holders of shares of common stock and preferred stock, subject to the satisfaction of any liquidation preference granted to the holders of any outstanding shares of preferred stock.

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

Fully Paid and Nonassessable. All outstanding shares of common stock are fully paid and nonassessable.

CDIs

In order for our shares of common stock in the form of CDIs to trade electronically on the ASX, we participate in the electronic transfer system known as the Clearing House Electronic Subregister System, or CHESS, operated by ASX Settlement Pty Limited, or ASX Settlement. ASX Settlement provides settlement services for ASX markets to assist participants and issuers to understand the operation of the rules and procedures governing settlement facilities. The ASX Settlement Operating Rules form part of the overall listing and market rules which we are required to comply with as an entity listed on ASX.

CHESS is an electronic system which manages the settlement of transactions executed on ASX and facilitates the paperless transfer of legal title to ASX quoted securities. CHESS cannot be used directly for the transfer of securities of companies domiciled in certain jurisdictions outside of Australia, such as the United States. Accordingly, to enable our shares of common stock to be cleared and settled electronically through CHESS, we have issued and will continue to issue depositary interests called CDIs.

CDIs confer the on the CDI holder the beneficial ownership in the shares of common stock, with three CDIs representing an interest in one share. The legal title to such shares is held by CHESS Depositary Nominees Pty Limited, a subsidiary of ASX Limited, which acts as our Australian depositary and issues the CDIs.

All CDIs bear a FOR-US designation with the ASX that is intended to preclude transfers to residents of the U.S. This designation is intended to similarly preclude purchases of CDIs by residents of the U.S.

A holder of CDIs who does not wish to have their trades settled in CDIs may request that their CDIs be converted into shares of common stock, in which case legal title to the shares of common stock will be transferred to the holder of CDIs. To date, no holder of CDIs has made such a request.

The transfer agent and registrar for our CDIs (known in Australia as a ‘securities registry’) is Computershare Investor Services Pty Limited. Its address is GPO Box 2975, Melbourne, Victoria 3001 Australia and its telephone number is +61 3 9415 4000.

Warrants

As of March 31, 2017, we had outstanding: (1) warrants to purchase 120,000 shares of common stock at an exercise price of $1.25 per share; (2) warrants to purchase 40,000 shares of common stock at an exercise price of $1.00 per share; and (3) warrants to purchase 52,500 shares of common stock at an exercise price of $1.00 per share. In the event of any merger or acquisition of AirXpanders, the holder of any warrant is obligated to exercise these warrants prior to the consummation of such merger or acquisition and the warrants shall expire immediately prior to the consummation of such merger or acquisition, unless the consideration to be paid to the holders of our common stock is something other than cash or marketable securities, in which case any successor entity to AirXpanders shall be obligated to assume the warrants.

From June 2013 to October 2013, in connection with the sale of its Series E convertible preferred shares, the Company issued a warrants to certain investors to purchase shares of Common Stock at an exercise price of $0.05 per shares, of which warrants to purchase an aggregate of 119,314 shares of Common Stock remain outstanding. In the event of any merger or acquisition of

AirXpanders, or upon expiration of the term of the warrants, the warrants will be deemed to have been net exercised without any action on the part of the holder thereof.

The exercise prices for each of the warrants may be adjusted in the event of any recapitalization, reclassification, exchange, or subdivision of our outstanding shares of Common Stock. In the event we were to declare and pay a dividend or other distribution on the shares of its common stock, then upon exercise of the warrants, the holder shall be entitled to receive, without additional cost to the holder, the total number and kind of securities and property which the holder would have received had holder owned the shares of record as of the date the dividend or distribution occurred.

Preferred Stock

Our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue up to 10,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each series and to fix the designation, powers, preferences and rights of the shares of each series and any of its qualifications, limitations or restrictions. Our board of directors can also increase or decrease the number of shares of any series, but not below the number of shares of that series then outstanding, without any further vote or action by the company's stockholders. Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring, discouraging or preventing a change in control of AirXpanders and may adversely affect the market price of our common stock and the voting and other rights of the holders of common stock.

Anti-Takeover Provisions

Our Certificate of Incorporation and Bylaws, include a number of provisions that may deter or impede hostile takeovers or changes of control or management. These provisions include:

Issuance of undesignated preferred stock. Our board of directors has the authority, without further action by the stockholders, to issue up to 10,000,000 shares of undesignated preferred stock with rights and preferences, including voting rights, designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock enables our board of directors to make it more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise.

Board of directors vacancies. Our Certificate of Incorporation and Bylaws authorize only our board of directors to fill vacant directorships. In addition, the number of directors constituting our board of directors may be set only by resolution adopted by a majority vote of our entire board of directors. These provisions prevent a stockholder from increasing the size of our board of directors and gaining control of our board of directors by filling the resulting vacancies with its own nominees.

Stockholder action; special meetings of stockholders. Our Certificate of Incorporation provides that our stockholders may not take action by written consent, but may only take action at annual or special meetings of our stockholders. Stockholders will not be permitted to cumulate their votes for the election of directors unless required by applicable law. Our amended and restated certificate of incorporation further provides that only the chairman of our board of directors, chief executive officer or a majority of our board of directors may call special meetings of our stockholders.

Advance notice requirements for stockholder proposals and director nominations. Our Bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders, or to nominate candidates for election as directors at our annual meeting of stockholders. Our Bylaws also specify certain requirements as to the form and content of a stockholder's notice. These provisions may make it more difficult for our stockholders to bring matters before our annual meeting of stockholders or to nominate directors at annual meetings of stockholders.

AirXpanders designed these provisions to enhance the likelihood of continued stability in the composition of our board of directors and its policies, to discourage certain types of transactions that may involve an actual or threatened acquisition of us, and to reduce our vulnerability to an unsolicited acquisition proposal. We also designed these provisions to discourage certain tactics that may be used in proxy fights. However, these provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they may also reduce fluctuations in the market price of our shares that could result from actual or rumored takeover attempts.

Section 203 of the Delaware General Corporation Law

We are subject to Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in a business combination with any interested stockholder for a period of three years following the date the person became an interested stockholder, with the following exceptions:

- before such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested holder;
- upon completion of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned (a) by persons who are directors and also officers and (b) pursuant to 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; and

- on or after such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.
- In general, Section 203 of the DGCL defines business combination to include the following:
- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 of the DGCL defines an "interested stockholder" as an entity or person who, together with the entity's or person's affiliates and associates, beneficially owns, or is an affiliate of the corporation and within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation. A Delaware corporation may "opt out" of these provisions with an express provision in its certificate of incorporation. We have not opted out of these provisions, which may as a result, discourage or prevent mergers or other takeover or change of control attempts of us.

ITEM 12. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

As permitted under Delaware law, AirXpanders indemnifies its officers and directors for certain events or occurrences that happen by reason of their relationships with, or position held at AirXpanders. Our Certificate of Incorporation and Bylaws provide for the indemnification of our directors and officers to the maximum extent permitted by Delaware General Corporation Law.

We have obtained and maintain director and officer liability insurance to indemnify our directors and officers against various liabilities our directors and officers may incur in his or her capacity as such. Our Certificate of Incorporation and Bylaws also provide that we will indemnify and advance expenses to any of our directors and officers who, by reason of the fact that he or she is one of our officers or directors, is involved in a legal proceeding of any nature. We will repay certain expenses incurred by a director or officer in connection with any civil, criminal, administrative or investigative action or proceeding, including actions by us in our name. Such indemnifiable expenses include, to the maximum extent permitted by law, advancement expenses, attorney's fees, judgments, fines, settlement amounts and other expenses reasonably incurred in connection with legal proceedings. A director or officer will not receive indemnification if he or she is found not to have acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, our best interests.

We have entered into indemnification agreements with our officers and directors to the extent permitted by law and our Certificate of Incorporation and Bylaws. We believe that these provisions and agreements are necessary to attract and retain qualified persons as directors.

Such limitation of liability and indemnification does not affect the availability of equitable remedies. In addition, we have been advised that in the opinion of the SEC, indemnification for liabilities arising under the Securities Act is against public policy as expressed in the Securities Act and is therefore unenforceable.

ITEM 13. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

Our consolidated financial statements, together with the report of our independent registered public accounting firm, appear on pages F-1 through F-19 of this registration statement.

ITEM 14. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

ITEM 15. FINANCIAL STATEMENTS AND EXHIBITS.

(a) Financial Statements

Our consolidated financial statements appear at the end of this Form 10. Please see the index to the consolidated financial statements on page F-1, which is incorporated herein by reference.

(b) Exhibits

See the Exhibit Index which follows the signature page of this Form 10, which is incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

AirXpanders, Inc.
(Registrant)

By: /s/ Scott Murcray
Name: Scott Murcray
Title: Chief Financial Officer and Chief Operating Officer

Date: May 1, 2017

AirXpanders, Inc.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders
AirXpanders, Inc.

We have audited the accompanying consolidated balance sheets of AirXpanders, Inc. (the "Company") as of December 31, 2016 and 2015, and the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit) and cash flows for the years ended December 31, 2016, 2015 and 2014. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2016 and 2015, and the results of its operations and its cash flows for the years ended 2016, 2015 and 2014, in conformity with U.S. generally accepted accounting principles.

/s/ SingerLewak LLP

San Jose, California
May 1, 2017

AirXpanders, Inc.
Consolidated Balance Sheets
(In thousands, except share and per share amounts)

	December 31, 2016	December 31, 2015
ASSETS		
Current assets		
Cash and cash equivalents	$ 11,477	$ 19,113
Accounts receivable	118	77
Inventory	1,413	527
Prepaid expenses and other current assets	558	194
Total current assets	13,566	19,911
Property and equipment	1,879	910
Other assets	84	77
Total assets	**$ 15,529**	**$ 20,898**
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Current portion of long-term debt, net of discount	$ 1,195	$ 1,500
Accounts payable	1,249	874
Accrued expenses	916	394
Total current liabilities	3,360	2,768
Long-term debt, less current portion, net of discount	—	1,084
Total liabilities	3,360	3,852
Commitments and Contingencies (Note 8)		
Stockholders' equity		
Preferred stock, $0.001 par value; 10,000,000 authorized; no shares issued and outstanding at December 31, 2016 and 2015	—	—
Class A common stock, $0.001 par value; 200,000,000 authorized; 79,241,708 and 70,427,195 issued and outstanding at December 31, 2016 and 2015	79	70
Class B common stock, $0.001 par value; 100,000,000 authorized; no shares issued and outstanding at December 31, 2016 and 2015	—	—
Additional paid-in capital	78,418	63,880
Accumulated deficit	(66,328)	(46,905)
Total stockholders' equity	12,169	17,045
Total liabilities and stockholders' equity	**$ 15,529**	**$ 20,897**

See accompanying notes to financial statements.

AirXpanders, Inc.
Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except per share amounts)

	Years Ended December 31,		
	2016	**2015**	**2014**
Revenue	$ 570	$ 293	$ —
Cost of goods sold	4,543	1,906	—
Gross loss	(3,973)	(1,613)	—
Operating expenses:			
Research and development	7,164	4,827	4,143
Selling, general and administrative	7,986	4,640	2,229
Total operating expenses	15,150	9,467	6,372
Operating loss	(19,123)	(11,080)	(6,372)
Other expense (income):			
Interest expense	249	422	561
Other expense (income), net	50	(341)	45
Total other expense (income), net	299	81	606
Operating loss before income tax provision	(19,422)	(11,161)	(6,978)
Provision for income taxes	1	—	—
Net loss and comprehensive loss	$ (19,423)	$ (11,161)	$ (6,978)
Net loss per Class A common share: basic and diluted	$ (0.26)	$ (0.32)	$ (7.74)
Weighted average number of Class A common shares used in computing net loss per Class A common share: basic and diluted	74,793,530	35,377,588	901,666

See accompanying notes to consolidated financial statements.

AirXpanders, Inc.
Consolidated Statements of Stockholders' Equity (Deficit)
(In thousands, except share and per share amounts)

	Convertible Preferred Stock		Common Stock				
	Issued and Outstanding Shares	Amount	Issued and Outstanding Shares	Amount	Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
Balance, December 31, 2013	**125,509,868**	**$ 125**	**901,665**	**$ 1**	**$ 32,343**	**$ (28,766)**	**$ 3,703**
Additional Series E preferred stock for cash (net of issuance costs of $20,981)	5,000,000	5	—	—	974	—	979
Stock-based compensation	—	—	—	—	108	—	108
Net loss	—	—	—	—	—	(6,978)	(6,978)
Balance, December 31, 2014	**130,509,868**	**130**	**901,665**	**1**	**33,425**	**(35,744)**	**(2,188)**
Issuance of common stock for cash (net of issuance costs of $2,872,649)	—	—	25,217,180	25	25,055	—	25,080
Exercise of warrants to purchase common stock	—	—	9,780,489	10	39	—	49
Exercise of stock options	—	—	2,965	—	1	—	1
Conversion of convertible bridge notes payable and accrued interest of $70,233 into common stock	—	—	4,412,474	4	5,026	—	5,030
Conversion of convertible preferred stock into common stock	(130,509,868)	(130)	30,112,422	30	100	—	—
Conversion of warrants to purchase preferred stock into warrants to purchase common stock	—	—	—	—	123	—	123
Stock-based compensation	—	—	—	—	111	—	111
Net loss	—	—	—	—	—	(11,161)	(11,161)
Balance, December 31, 2015	**—**	**—**	**70,427,195**	**70**	**63,880**	**(46,905)**	**17,045**
Issuance of common stock for cash (net of issuance costs of $731,489)	—	—	8,771,930	9	14,150	—	14,159
Exercise of stock options	—	—	42,583	—	11	—	11
Stock-based compensation	—	—	—	—	377	—	377
Net loss	—	—	—	—	—	(19,423)	(19,423)
Balance, December 31, 2016	**—**	**$ —**	**79,241,708**	**$ 79**	**$ 78,418**	**$ (66,328)**	**$ 12,169**

See accompanying notes to consolidated financial statements.

AirXpanders, Inc.
Consolidated Statements of Cash Flows
(In thousands)

	For the Years Ended December 31,		
	2016	2015	2014
Cash flows from operating activities			
Net loss	$(19,423)	$(11,161)	$(6,978)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	237	86	37
Amortization of debt discount and deferred issuance cost	111	37	24
Loss of disposal of assets	14	—	—
Interest on convertible bridge notes payable converted to common stock	—	70	110
Changes in fair value of warrant liabilities	—	(42)	51
Inventory write-down	1,537	527	160
Stock-based compensation	377	111	108
Changes in operating assets and liabilities:			
Accounts receivable	(41)	(77)	—
Inventory	(2,423)	(883)	(332)
Prepaid expenses and other assets	(390)	(175)	6
Accounts payable	325	473	(27)
Accrued expenses	522	199	50
Net cash used in operating activities	(19,154)	(10,835)	(6,791)
Cash flows from investing activities			
Purchase of property and equipment	(1,151)	(840)	(96)
Net cash used in investing activities	(1,151)	(840)	(96)
Cash flows from financing activities			
Proceeds from notes payable	—	—	3,417
Proceeds from convertible bridge notes payable	—	4,960	—
Principal payments on notes payable	(1,500)	(953)	(1,083)
Proceeds from issuance of common stock, net of issuance costs	14,159	25,080	979
Proceeds from exercise of stock options	10	1	—
Proceeds from exercise of warrants for common stock	—	49	—
Net cash provided by financing activities	12,669	29,137	3,313
Net (decrease) increase in cash and cash equivalents	(7,636)	17,462	(3,574)
Cash and cash equivalents — beginning of period	19,113	1,651	5,225
Cash and cash equivalents — end of period	$ 11,477	$ 19,113	$ 1,651
Supplemental disclosure:			
Cash paid for interest	$ 138	$ 240	$ 429
Cash paid for taxes	$ 1	$ 1	$ 1
Supplemental schedule of noncash investing and financing activities:			
Conversion of preferred stock to common stock in connection with initial public offering (IPO)	$ —	$ 34,633	$ —
Conversion of convertible bridge notes payable and accrued interest to common stock in connection with IPO	$ —	$ 5,030	$ —
Conversion of warrant liabilities to equity	$ —	$ 123	$ —

See accompanying notes to consolidated financial statements.

NOTE 1 – DESCRIPTION OF BUSINESS

AirXpanders, Inc. and its Australian branch ("AirXpanders" or the "Company") is a Delaware corporation formed on March 17, 2005, and is headquartered in Palo Alto, California. The Company designs, manufactures and markets medical devices to improve breast reconstruction. The Company's AeroForm Tissue Expander System is used in patients undergoing two-stage breast reconstruction following mastectomy. AeroForm was granted U.S. FDA de novo marketing authorization in 2016, its first CE mark in Europe in 2012 and is currently licensed for sale in Australia. To date, the Company has been primarily engaged in developing and launching its initial product technology, building the manufacturing infrastructure to support commercialization efforts, recruiting key personnel and raising capital.

In June 2015, the Company issued 29,629,654 shares of common stock in connection with an initial public offering on the Australia Securities Exchange (ASX) and conversion of convertible bridge notes payable and related accrued interest (IPO). The Company raised a total of $30,089,162, net of issuance costs of $2,872,649.

NOTE 2 – LIQUIDITY

The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business for the foreseeable future. The Company has incurred net losses and cash flow deficits from operations since its inception and has an accumulated deficit of $66,328,294 at December 31, 2016. To date, the Company's products have been approved for marketing and sales in Europe, Australia and the United States, and the Company started selling its product in Australia in 2015, and in the United States in 2017. Management expects operating losses and cash flow deficits to continue for the foreseeable future. The Company's ability to achieve profitability is dependent primarily on its ability to gain market share in the U.S, build and maintain manufacturing capacity to support commercial launch in the U.S. and obtain a more profitable per unit manufacturing cost for its products. The Company's plan to address these adverse conditions is to raise additional funds for operations through the issuance of equity securities and debt. These activities are expensive, time-consuming, and uncertain, and any delay could have a material adverse effect on the Company. The accompanying consolidated financial statements do not include any adjustments that may be needed if the Company were unable to continue as a going concern.

In February 2017, the Company issued 16,304,348 shares of Common Stock in connection with an equity offering on the ASX. The Company raised a total of $34,110,563, net of issuance costs of $1,364,423. The Company believes that the cash from the offering and its cash and cash equivalents are sufficient to remain in operations for at least one year from date of issuance of these consolidated financial statements.

NOTE 3 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP). The consolidated financial statements include the accounts of AirXpanders, Inc. and its Australian branch office. Intercompany transactions and balances have been eliminated in consolidation. Certain amounts presented in prior periods have been reclassified to the current year presentation. Such changes had no effect on the previously reported net loss or accumulated deficit.

Foreign Currency

The Company transacts business in Australia. The functional currency of its Australian branch is the U.S. dollar. Monetary assets and liabilities are translated at the year-end exchange rate and non-monetary assets and liabilities are translated at historical rates and items in the statement of operations are translated at average rates with gains and losses from remeasurement being recorded in other expense (income), net in the accompanying consolidated statements of operations and comprehensive loss. Foreign currency translation and remeasurement gains or losses included in other expense (income), net in the accompanying consolidated statements of operations and comprehensive loss was a loss of $37,810 during the year ended December 31, 2016 and a gain of $261,478 during the year ended December 31, 2015. There were no currency gains or losses in 2014.

Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of expenses during the reporting period. Actual results could differ materially from those estimates. The Company's most significant estimates relate to the valuation of its common stock prior to the IPO, valuation of stock options and valuation of its inventory at the lower of cost or market.

Certain Significant Risks and Uncertainties

The Company operates in a dynamic, highly competitive industry and believes that changes in any of the following areas could have a material adverse effect on the Company's future financial position, results of operations, or cash flows: ability to obtain future financing; advances and trends in new technologies and industry standards; regulatory approval and market acceptance of the Company's products; development of sales channels; certain supplier relationships; litigation or claims against the Company based on intellectual property, patent, product, regulatory, or other factors including the Company's ability to attract and retain employees necessary to support its growth.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to credit risk consist primarily of cash and cash equivalents. The Company maintains all of its U.S. cash balances at one financial institution, which at times may exceed the Federal Deposit Insurance Corporation (FDIC) limits of $250,000 for interest-bearing accounts. At December 31, 2016, the Company had unrestricted cash balances of approximately $10,822,486 that were in excess of the FDIC limits. The Company also maintains all of its Australian cash balance at one financial institution, which at times may exceed the Australian government guaranteed limit of USD $180,777 (AU$ 250,000). At December 31, 2016, the Company had a cash balance of approximately $798,527 that were in excess of the guaranteed limit.

Cash and Cash Equivalents

The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. At December 31, 2016, the Company maintained a balance of $10,501,867 with one U.S. financial institution and the U.S. dollar equivalent of approximately $975,284 with one Australian financial institution. Restricted cash of $30,000 and $25,000 at December 31, 2016 and December 31, 2015, respectively, is included in other assets in the accompanying consolidated balance sheets.

Inventory

Inventory is valued at the lower of cost or market value, with cost determined by the first-in, first-out method. When needed, the Company provides reserves for excess or obsolete inventory.

Property and Equipment

Property and equipment are stated at cost, net of accumulated depreciation and amortization. Depreciation and amortization is computed using the straight-line method over the estimated useful lives of the assets, generally three to five years. Leasehold improvements and property and equipment under capital leases are amortized over the shorter of the estimated useful lives of the assets or the lease terms. Construction in process assets are stated at cost and will be depreciated over their estimated useful lives once placed in service.

Expenditures for repairs and maintenance are charged to expense as incurred. Upon disposition of an asset, the cost and related accumulated depreciation are removed from the accounts and the resulting gain or loss is reflected in the consolidated statement of operations.

Impairment of Long-Lived Assets

The Company's long-lived assets and other assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of an asset to be held and used is measured by a comparison of the carrying amount of an asset to the future undiscounted cash flows expected to be generated by the asset. If such asset

is considered to be impaired, the impairment to be recognized is measured as the amount by which the carrying amount of the asset exceeds its fair value. Through December 31, 2016, the Company had not experienced impairment losses on its long-lived assets.

Fair Value of Financial Instruments

The Company follows Financial Accounting Standards Board ("FASB") Accounting Standards Codification Topic No. 820, Fair Value Measurement ("ASC 820"), which clarifies fair value as an exit price, establishes a hierarchal disclosure framework for measuring fair value, and requires extended disclosures about fair value measurements. The provisions of ASC 820 apply to all financial assets and liabilities measured at fair value.

As defined in ASC 820, fair value represents the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As a result, fair value is a market-based approach that should be determined based on assumptions that market participants would use in pricing an asset or a liability. As a basis for considering these assumptions, ASC 820 defines a three-tier value hierarchy that prioritizes the inputs used in the valuation methodologies in measuring fair value.

Level 1 – Quoted prices in active markets for identical assets or liabilities.

Level 2 – Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 – Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

The following table sets forth by level, within the fair value hierarchy, the Company's assets measured at fair value on a recurring basis in the balance sheet as of the following dates (in thousands):

	December 31, 2016			
	Fair Value Measurements Using Input Types			
	Level 1	Level 2	Level 3	Total
Cash and cash equivalents	$11,477	$ —	$ —	$11,477
Total assets at fair value	$11,477	$ —	$ —	$11,477

	December 31, 2015			
	Fair Value Measurements Using Input Types			
	Level 1	Level 2	Level 3	Total
Cash and cash equivalents	$19,113	$ —	$ —	$19,113
Total assets at fair value	$19,113	$ —	$ —	$19,113

Long-term debt is valued at carrying value which is considered to be representative of its fair value based on current market rates available to the Company for comparable borrowing facilities as well as due to its short time of maturity (Level 2 measurement).

Revenue Recognition

The Company recognizes revenue from sales of its products in accordance with the Revenue Recognition Topic ASC 605. The Company recognizes revenue from product sales when the following four criteria are met: delivery has occurred, there is persuasive evidence of an arrangement, the fee is fixed or determinable, and collectability of the related receivable is reasonably assured. Revenue recognition generally occurs after a device has been implanted in a patient and a purchase order has been received from the customer.

Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are stated at cost, net of allowance for doubtful accounts. Credit is extended to customers based on an evaluation of their financial condition and other factors. The Company does not charge interest on past due balances. The Company generally does not require collateral or other security to support accounts receivable. The Company performs ongoing credit evaluations of its customers and maintains an allowance for doubtful accounts.

The Company estimates its allowance for doubtful accounts by evaluating specific accounts where information indicates that customers may have an inability to meet their financial obligations and receivable amounts are outstanding for an extended period beyond the invoice terms. In these cases, the Company uses assumptions and judgment, based on the best available facts and circumstances, to either record a specific allowance against these customer balances or to write the balances off. The accounts receivable aging is reviewed on a regular basis and write-offs are recorded on a case-by-case basis net of any amounts that may be collected. Allowance charges are recorded as operating expenses. Based on the Company's customer analysis, it did not have an allowance for doubtful accounts at December 31, 2016 and 2015.

Concentration

Two customers each contributed 16% of the Company's revenue for the year ended December 31, 2016 and two customers accounted for 33%, respectively, of the accounts receivable balance at December 31, 2016. One customer contributed 24% of the Company's revenue for the year ended December 31, 2015 and two customers accounted for 47% of the accounts receivable balance at December 31, 2015. Substantially all product sales in 2016 and 2015 were to hospitals in Australia. There were no revenues in 2014.

Reverse Stock Split

In May 2015 the Company's stockholders approved a 5-for-1 reverse stock split of all outstanding common stock and all securities exercisable into common stock. All amounts for common stock, preferred stock conversion ratios, stock options and warrants in the consolidated financial statements have been retroactively adjusted to reflect the effect of the reverse stock split.

Stock-Based Compensation

Stock-based compensation is measured at the grant date based on the fair value of the award. The fair value of the award that is ultimately expected to vest is recognized as expense on a straight-line basis over the requisite service period, which is generally the vesting period. The expense recognized for the portion of the award that is expected to vest has been reduced by an estimated forfeiture rate. The forfeiture rate is determined at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

The Company uses the Black-Scholes option-pricing model (the "Black-Scholes model") as the method for determining the estimated fair value of stock options.

Expected Term

The Company's expected term represents the period that the Company's stock-based awards are expected to be outstanding and is determined using the simplified method, which essentially equates to a weighted average of the vesting periods and total term of the award.

Expected Volatility

Expected volatility is estimated using comparable public company's volatility for similar terms as the Company does not have a long enough operating period as a public company to estimate its own volatility. Over time as the Company develops its own volatility history it will begin to incorporate that history into its expected volatility estimates. Prior to the Company's listing on the ASX it used the same methodology.

Expected Dividend

The Black-Scholes model calls for a single expected dividend yield as an input. The Company has never paid dividends and has no current plans to pay dividends on its common stock.

Risk-Free Interest Rate

The risk-free interest rate used in the Black-Scholes model 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 the option.

The Company recognizes the fair value of stock options granted to nonemployees as stock-based compensation expense over the period in which the related services are received.

Research and Development

Costs incurred in research and development activities (including clinical trials) are expensed as incurred. Research and development costs include, but are not limited to, payroll and personnel expenses, laboratory supplies, consulting costs, travel, parts and materials, equipment expenses, and equipment depreciation.

Income Taxes

The Company accounts for income taxes using the asset and liability method. Under this method, deferred income tax assets and liabilities are recorded based on the estimated future tax effects of differences between the financial statement and income tax basis of assets and liabilities. In addition, deferred tax assets are recorded for the future benefit of utilizing net operating loss and tax credit carryovers. Deferred tax assets and liabilities are measured using the enacted tax rates applied to taxable income. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. A valuation allowance is provided against the Company's deferred income tax assets when it is more likely than not that the asset will not be realized.

Significant judgment is required in determining any valuation allowance recorded against deferred tax assets. In assessing the need for a valuation allowance, the Company considers all available evidence, including past operating results, estimates of future

taxable income and the feasibility of tax planning strategies. In the event that the Company changes its determination as to the amount of deferred tax assets that are more likely than not to be realized, the Company will adjust its valuation allowance with a corresponding impact to the provision for income taxes in the period in which such determination is made.

The Company follows authoritative guidance regarding uncertain tax positions. This guidance requires that realization of an uncertain income tax position must be more likely than not (i.e. greater than 50% likelihood of receiving a benefit) before it can be recognized in the financial statements. The guidance further prescribes the benefit to be realized assumes a review by tax authorities having all relevant information and applying current conventions. The interpretation also clarifies the financial statement classification of tax related penalties and interest and sets forth disclosures regarding unrecognized tax benefits. The Company recognizes potential accrued interest and penalties related to unrecognized tax benefits as income tax expense.

Segments

The Company has determined the chief executive officer is the chief operating decision maker. The Company's chief executive officer reviews financial information presented for purposes of assessing performance and making decisions on how to allocate resources. The Company has determined that it operates in a single reporting segment.

Basic and Diluted Net Loss Per Share

Basic net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed by giving effect to all potential shares of common stock, stock options, stock warrants, convertible debt and convertible preferred stock to the extent dilutive. For the periods presented, all such common stock equivalents have been excluded from diluted net loss per share as the effect to net loss per share would be anti-dilutive.

Following is a table summarizing the potentially dilutive common shares that were excluded from diluted weighted-average common shares outstanding as there effects would be antidilutive as of December 31 (in thousands):

	December 31,		
	2016	2015	2014
Shares of Class A common stock issuable upon conversion of warrants and convertible preferred stock	337	387	40,279
Potential Class A common shares excluded from diluted net loss per share	5,356	4,171	3,845
Basic and diluted net loss per Class A common share	5,693	4,558	44,124

Subsequent to December 31, 2016, the Company issued 16,304,348 shares of common stock in connection with an equity offering (See Note 17, "Subsequent Events").

Recent Accounting Pronouncements

In November 2016, the FASB issued ASU 2016-18, Statement of Cash Flows (Topic 230): Restricted Cash, which requires that a statement of cash flows explain the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash when reconciling the beginning-of-period and end-of-period total amounts shown on the statement of cash flows. The new guidance is effective for annual reporting periods beginning after December 15, 2017, and interim periods within that reporting period. Early adoption is permitted including adoption in an interim period. The Company is currently in the process of evaluating the impact of the adoption on its consolidated financial statements and related disclosures.

In August, the FASB issued ASU 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments, which addresses certain issues where diversity in practice was identified and may change how an entity classifies certain cash receipts and cash payments on its statement of cash flows. The new guidance is effective for annual reporting periods beginning after December 15, 2017, and interim periods within that reporting period. Early adoption is permitted. The Company is currently in the process of evaluating the impact of the adoption on its consolidated financial statements and related disclosures.

In March 2016, the FASB issued ASU 2016-09, Improvements to Employee Share-Based Payment Accounting, which amends ASC Topic 718, Compensation—Stock Compensation. The new guidance simplifies several aspects of the accounting for employee share-based payment transactions for both public and nonpublic entities, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows. The new guidance is effective for public business entities for annual reporting periods beginning after December 15, 2016, and interim periods within that reporting period. The Company is currently evaluating the impact of this guidance on its consolidated financial statements.

In February 2016, the FASB issued a new standard, Leases, ASC 842. Lessees will need to recognize all lease arrangements with terms longer than twelve months on their balance sheet as a right-of-use asset and a corresponding lease liability. For income statement purposes, the FASB retained a dual model, requiring leases to be classified as either operating or finance. Lessor accounting is similar to the current model. Existing sale-leaseback guidance, including guidance for real estate, is replaced with a new model applicable to both lessees and lessors. The new guidance is effective for public business entities in fiscal years beginning after December 15, 2018. The Company is currently evaluating the impact of this guidance on its consolidated financial statements.

In November, 2015, the FASB issued ASU 2015-17, “Income Taxes”. The new guidance requires that all deferred tax assets and liabilities, along with any related valuation allowance for each tax-paying jurisdiction within each tax-paying component, be classified as noncurrent on the balance sheet. The new guidance will be effective for public business entities in fiscal years beginning after December 15, 2016, including interim periods within those years. Early adoption is permitted for all entities as of the beginning of an interim or annual reporting period. The Company adopted the ASU as of December 31, 2016 and its consolidated Balance Sheets as of this date reflects the revised classification of current deferred tax assets and liabilities as noncurrent. However, due to 100% valuation allowance against the Company’s net deferred tax assets adoption had substantially no impact on its consolidated financial statements.

In July 2015, the FASB issued ASU 2015-11, “Inventory (Topic 330): Simplifying the Measurement of Inventory”. ASU 2015-11 more closely aligns the measurement of inventory in U.S. GAAP with the measurement of inventory in International Financial Reporting Standards by requiring companies using any methods of inventory valuation other than last-in, first-out or the retail inventory methods to measure inventory using the lower of cost and net realizable value, where net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. For public business entities, ASU 2015-11 is effective for annual reporting periods beginning after December 15, 2016 including interim periods within those fiscal years. ASU 2015-11 should be applied prospectively with earlier application permitted as of the beginning of an interim or annual reporting period. The Company is currently evaluating the impact of this ASU in its consolidated financial statements.

In April 2015, the FASB issued ASU 2015-03, “Simplifying the Presentation of Debt Issuance Costs”, which requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. This ASU requires retrospective adoption and is effective in 2016 for the Company. The Company adopted this ASU as required on a retrospective basis which resulted in an immaterial debt issuance cost reclassification as of December 31, 2016 and 2015 in its consolidated financial statements.

In August 2014, the FASB issued ASU 2014-15, “Presentation of Financial Statements - Going Concern” relating to the disclosure of an entity’s going concern uncertainty. This update provides guidance about managements responsibilities in evaluating an entity’s going concern uncertainties, and about the timing and content of related footnote disclosures. Under this amended guidance, an entity’s management should evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the entity’s ability to continue as a going concern within one year after the date the consolidated financial statements are issued. For public business entities, ASU 2014-15 is effective for annual reporting periods ending after December 15, 2016. The Company adopted this ASU as required for its December 31, 2016 consolidated financial statements and made the required evaluation and disclosures.

In May 2014, the FASB issued ASU No. 2014-09, “Revenue from Contracts with Customers (Topic 606)”. The core principle of the guidance is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. To achieve that core principle, an entity should 1) identify the contract(s) with a customer, 2) identify the performance obligations in the contract, 3) determine the transaction price, 4) allocate the transaction price to the performance obligations in the contract, and 5) recognize revenue when (or as) the entity satisfies a performance obligation. In July 2015, the FASB deferred for one year the effective date of the new revenue standard, but early adoption will be permitted. The new standard will be effective for the Company on January 1, 2018. The Company is currently evaluating the impact of this ASU on its consolidated financial statements.

NOTE 4 – INVENTORY

Inventory consisted of the following as of December 31 (in thousands):

	2016	2015
Raw materials	$ 760	$221
Work in progress	439	242
Finished goods	214	64
Inventory	$1,413	$527

The Company had written down its inventory to market value by $1,537,090, $527,444 and $160,406 for the years ended December 31, 2016, 2015 and 2014, respectively.

NOTE 5 – PROPERTY AND EQUIPMENT

Property and equipment consisted of the following as of December 31 (in thousands):

	2016	2015
Machinery and equipment	$1,084	$ 715
Computer equipment	161	122
Furniture and fixtures	84	77
Leasehold improvements	170	100
Software licenses	189	19
Office equipment	11	9
Construction in progress	872	396
Property and equipment, gross	2,571	1,438
Accumulated depreciation	(692)	(528)
Property and equipment, net	$1,879	$ 910

Depreciation and amortization expense amounted to $237,291, $85,619 and $36,851 for the years ended December 31, 2016, 2015, and 2014, respectively.

NOTE 6 – ACCRUED EXPENSES

Accrued expenses consisted of the following as of December 31 (in thousands):

	2016	2015
Accrued compensation and benefits	$425	$199
Accrued rent payable	69	29
Accrued clinical trials services	177	—
Accrued inventory supplies	93	43
Accrued other	152	123
Total accrued expenses	$916	$394

NOTE 7 – DEBT FINANCING

Loans

In January 2014, the Company borrowed $3,500,000 under a loan and security agreement with a financial institution which matures in July 2017. Interest is paid monthly on the principal amount at 7.34% per annum. The loan is secured by substantially all of the Company's assets, excluding intellectual property. Under the terms of the agreement, interest-only payments were made monthly through March 2015, with principal payments commencing in April 2015, due in 28 equal monthly installments. A fee of $271,250 is due at maturity, which is being accrued over the term of the loan. The Company can prepay the entire loan amount by providing a written five day notice prior to such prepayment and pay all outstanding principal, interest and prepayment fees plus any default fees and all other sums that shall have become due and payable.

In March 2015, the Company amended the loan and security agreement to extend the interest-only period from March 2015 to April 2015, with principal payments commencing in May 2015, due in 27 equal monthly installments. The Company had the option to borrow an additional $3,500,000 under the agreement, with the same terms, if certain conditions were met. This option expired unexercised in June 2015.

In connection with the loan agreement and security agreement, the Company granted a warrant to the financial institution for the purchase of 52,500 shares of Series E convertible preferred stock ("Series E") at $1.00 per share. As a result of the Company's IPO in June 2015 and conversion of all outstanding preferred stock into common stock, the warrants were converted into warrants for 52,500 shares of common stock at an exercise price of $1.00 per share. The fair value of the warrant of $31,710 on the date of issuance was recorded as a debt discount.

The Company recorded $34,814, $36,566 and $23,729 to interest expense related to amortization of the debt discount and issuance costs for the years ended December 31, 2016, 2015 and 2014, respectively. As of December 31, 2016, the unamortized discount and issuance cost is $31,240.

The Company recorded $249,054, $346,251 and $561,075 of interest expense on the loans for the years ended December 31, 2016, 2015 and 2014, respectively. At December 31, 2016, $1,226,574 was outstanding under this loan and security agreement.

Convertible Bridge Notes Payable

In February and June 2015, the Company raised through a private placement of convertible bridge notes payable a total of $4,959,987 in net cash proceeds. The convertible bridge notes had a stated interest rate of 7% per annum. All the outstanding convertible bridge notes payable and accrued unpaid interest of $70,233 were converted into 4,412,474 shares of common stock as part of Company's IPO in June 2015.

Lease Obligations

The Company leases its office space under a non-cancelable operating lease. Monthly base rent payments range from approximately $13,300 to $21,300. In July 2015, the Company signed an agreement to extend its current office space lease to September 30, 2019. Under the same lease agreement, the Company expanded the premises and leased additional office space commencing October 1, 2015.

The Company recognizes rent expense on a straight-line basis over the term of the lease. Rent expense (including common area maintenance) related to the Company's operating leases was $513,794, $272,967 and $203,130 for the years ended December 31, 2016, 2015 and 2014, respectively. The deferred rent balance was $68,908 and $28,976 at December 31, 2016 and 2015, respectively.

NOTE 8 – COMMITMENTS AND CONTINGENCIES

As of December 31, 2016, the future rental commitments due under the lease are (in thousands):

Year ending December 31,	
2017	$ 402
2018	414
2019	317
Total	$1,133

Indemnifications

The Company has agreed to indemnify its officers and directors for certain events or occurrences arising as a result of the officers or directors serving in such capacity. The Company has a directors and officers' liability insurance policy that limits its exposure and enables the Company to recover a portion of any future amounts paid resulting from the indemnification of its officers and directors. In addition, the Company enters into indemnification agreements with other parties in the ordinary course of business. The Company has not incurred material costs to defend lawsuits or settle claims related to these indemnification agreements. The Company's management believes the estimated fair value of these indemnification agreements is minimal and has not recorded a liability for these agreements as of December 31, 2016 and 2015.

Contingencies

From time to time we may become involved in legal proceedings or be subject to claims arising in the ordinary course of our business. We are not presently a party to any legal proceedings that, if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, financial condition or cash flows.

Royalties

The Company uses AeroForm technology in the products it is developing. AeroForm embodies inventions that have been patented in certain key jurisdictions. Certain of those patents are held by Shalon Ventures (either alone or jointly with AirXpanders). Shalon Ventures and AirXpanders have entered into a License Agreement dated March 9, 2005 (as amended on March 9, 2009, January 9,

2012 and January 15, 2014) in relation to those inventions (Shalon Ventures License Agreement). Pursuant to the Shalon Ventures License Agreement, Shalon Ventures granted AirXpanders an exclusive license to develop, make, have made, use, offer for sale, sell, have sold, import and export products that, but for the license, would infringe one or more claims of the patents. The license covers all human uses of self-expanding tissue expanders anywhere in the world and includes the right to sublicense.

In consideration for the license, AirXpanders pays Shalon Ventures a running royalty of 3% of net sales of the licensed invention. If the amount of royalties paid in a calendar year is less than $10,000, then AirXpanders shall also pay Shalon Ventures' out

of pocket costs for prosecuting and maintaining the relevant patents. Each party indemnifies the other for any liability arising out of its material breach of the license, or its gross negligence, intentional misconduct and illegal actions. AirXpanders also indemnifies Shalon Ventures for any liability arising out of the commercialization of products using the license. Through the year ended December 31, 2016, the Company has incurred $19,266 in royalty fees. Mr. Teddy Shalon and Mr. Barry Cheskin are directors and stockholders of the Company. Mr. Cheskin is also the co-founder and chairman of the board of the Company. Mr. Shalon is the Chief Executive Officer and sole shareholder of Shalon Ventures. Mr. Shalon and Mr. Cheskin are each party to an agreement with Shalon Ventures, under which Shalon Ventures has agreed to pay Mr. Shalon 58%, and Mr. Cheskin 8%, of any royalties due to Shalon Ventures from AirXpanders under the Shalon Ventures License Agreement.

NOTE 9 – COMMON STOCK

In May 2015, the Company's stockholders approved a 5-for-1 reverse stock split of all outstanding common stock and all securities exercisable into common stock.

The Company's Certificate of Incorporation, as amended, authorize the Company to issue 300,000,000 shares of $0.001 par value common stock consisting of 200,000,000 shares of common stock Class A and 100,000,000 shares of common stock Class B. Class A Common Stockholders are entitled to dividends when and if declared by the Board of Directors, Class B common stockholders are not entitled to any dividends. The holder of each share of Class A Common Stock is entitled to one vote and holders of Class B common stock are not entitled to vote. At December 31, 2016 and 2015, no dividends had been declared for common stock. At December 31, 2016, 79,241,708 and no shares of common stock Class A and Class B, respectively, were issued and outstanding.

As of December 31, 2016 and 2015, common stock that the Company had reserved for issuance was as follows (in thousands):

	2016	2015
Warrants for common and convertible preferred shares	336,814	386,814
Stock option plans	6,956,580	5,590,619
Total	7,293,394	5,977,433

In June 2016, the Company issued 8,771,930 shares of common stock in connection with an equity offering on the ASX. The Company cash proceeds were $14,158,511, net of issuance costs of $731,489.

In June 2015, the Company issued 29,629,654 shares of common stock in connection with an IPO on the ASX and conversion of convertible bridge notes payable and related accrued interest. The Company raised a total of $30,089,162, net of issuance costs of $2,872,649. Of this amount $28,001,824 (AU$36.5 million) were cash proceeds directly from the IPO; $4,959,987 were net cash proceeds from the private placement of convertible bridge notes payable.

NOTE 10 – CONVERTIBLE PREFERRED STOCK

The Company issued Series A, B, B-1, C, D and E convertible preferred stock during the period from 2005 through 2014, raising a total of $30,393,627 in cash, net of issuance costs of $595,493.

As part of Company's IPO in June 2015, all outstanding convertible preferred stock was converted into common stock. Series A, B, B-1 and E convertible preferred stock were converted to common stock at a 1:1 ratio, Series C convertible preferred stock was converted to common at a 1.25:1 ratio and Series D convertible preferred stock was converted to common at a 1.35:1 ratio. After conversion of all preferred stock to common stock, the Company cancelled all authorized series of preferred stock.

The Company's Certificate of Incorporation, as amended, authorize the Company to issue 10,000,000 authorized shares of preferred stock, with rights and privileges for preferred stock to be determined by Company's Board of Directors before issuing preferred shares. At December 31, 2016, there are no outstanding shares of preferred stock.

NOTE 11 – WARRANTS

The Company accounts for warrants in accordance with ASC 480, "Distinguishing Liabilities from Equity" ("ASC 480"). Under ASC 480, warrants containing certain features, such as put rights and anti-dilution protection, are required to be accounted for as liabilities and recorded at fair value, with changes in fair value being recorded in the consolidated statement of operations. The

Company's preferred stock warrants prior to conversion to common stock warrants had contained such features, requiring liability accounting.

As part of Company's IPO in June 2015, all outstanding preferred stock warrants were converted into warrants for common stock. As a result of this conversion, the warrants liabilities for $122,516 were reclassified to additional paid in capital. The Company is required to reserve authorized but unissued shares of its common stock in an amount equal to the number of warrant shares purchasable under the arrangements described below.

The warrant liabilities were revalued at the end of each reporting period and through June 2015 the date of conversion to common stock warrants with the changes in fair value recorded in other income (expense) in the statements of operations.

The changes in fair value of these warrants recorded as other income (expense) for the year ended December 31, 2015 and 2014, totaled ($41,623) and ($50,684), respectively.

The fair value of the warrant liabilities was estimated using Black-Scholes model using the following assumptions:

	2015	2014
Stock price	$1.16	$0.10 — $0.29
Expected terms (years)	0.62 — 8.67 years	1.00 — 9.04 years
Volatility	33.06 — 43.08%	32.20 — 44.70%
Risk-free rate	0.24 — 1.99%	0.11 — 2.57%
Dividend yield	— %	— %

The Company's outstanding warrants consisted of the following as of December 31:

	2016	2015
Warrants; exercisable in common stock, exercise price $2.381 per share, expired in March 2016	—	50,000
Warrants; exercisable in common stock, exercise price $0.05 per share, expiring in June 2018	119,314	119,314
Warrants; exercisable in common stock, exercise price $0.05 per share, expiring in October 2018	5,000	5,000
Warrants; exercisable in common stock, exercise price $1.25 per share, expiring in February 2021	120,000	120,000
Warrants; exercisable in common stock, exercise price $1.00 per share, expiring in January 2023	40,000	40,000
Warrants; exercisable in common stock, exercise price $1.00 per share, expiring in January 2024	52,500	52,500
Total	336,814	386,814

NOTE 12 – STOCK-BASED COMPENSATION

In March 2005, the Company adopted the 2005 Equity Incentive Plan (the "2005 Plan"). In May 2015 the Company adopted the 2015 Equity Incentive Plan (the "2015 Plan") collectively, (the "Plans"). The Plans provide for the granting of stock options to employees and consultants of the Company. Options granted under the Plan may be either incentive stock options or nonqualified stock options. Incentive stock options (ISO) may be granted only to Company employees (including officers and directors who are also employees). Nonqualified stock options (NSO) may be granted to Company employees and consultants.

In May 2013, the 2005 Plan was amended to increase the number of shares reserved for issuance under the Plan to 6,170,159 shares of common stock.

During the year ended December 31, 2015, the 2005 Plan expired and no future options can be granted under the 2005 Plan.

The Company has reserved 1,500,000 shares under the 2015 Plan in addition a total of 4,099,835 shares reserved under the 2005 Plan will be added to 2015 plan if and when the underlying options are cancelled. Pursuant to the 2015 Plan's "evergreen" provision, on the first day of each calendar year beginning in 2016, the number of shares reserved and available for issuance will be increased by an amount equal to 2.0% of the total number of shares of capital stock outstanding on December 31st of the preceding calendar year, subject to a cap equal to 10% of the fully diluted number of shares of capital stock of the Company as of the same date.

Options under the Plans may be granted for periods of up to 10 years and at prices no less than 100% of the estimated fair value of the shares on the date of grant. In the case of an Incentive Stock Option granted to a holder who, at the time the Option is granted, owns stock representing more than 10% of the voting power of all classes of stock of the Company, the term of the Option shall be up to 5 years from the date of grant and at no less than 110% of the estimated fair value of the shares on the date of grant. Options granted generally vest 1/4 on the 12-month anniversary of the vesting commencement date and 1/48 on each monthly anniversary thereafter.

At December 31, 2016 and 2015, 5,216,327 and 4,127,900 options were vested and expected to vest with a weighted-average exercise price of $0.3775 and $0.3329 and weighted average remaining contractual life of 6.60 and 6.57 years, respectively. The weighted average grant date fair value per share of options granted during the years ended December 31, 2016, 2015 and 2014 was $0.8553, $0.3439 and $0.05, respectively. The fair value of shares vested during the years ended December 31, 2016, 2015 and 2014

was $226,611, $96,344 and $149,804, respectively. The intrinsic value of the options exercised during the years ended December 31, 2016 and 2015 was $98,407 and $5,343, respectively. There were no options exercised in 2014.

In connection with the grant of stock options to employees and non-employees, the Company recorded stock compensation expense as follows (in thousands):

	Years Ended December 31,		
	2016	2015	2014
Cost of goods sold	$ 44	$ —	$ —
Research and development	32	—	—
Selling, general and administrative	301	111	108
Total	$ 377	$ 111	$ 108

As of December 31, 2016, unrecognized compensation expense related to employees and to non-employees totaled $989,480 and $94,974, respectively, and will be recognized over approximately 3.1 years and 2.4 years, respectively.

Activity under the Plan is set forth below:

	Options Available for Grant	Number of Options Outstanding	Exercise Price per Share	Weighted Average Remaining Contractual Life in Years
Balance — December 31, 2013	1,551,925	3,810,607	$ 0.30	8.29
Options granted	(52,026)	52,026	0.10	
Options exercised	—	—	—	
Options forfeited/cancelled	16,924	(16,924)	0.20	
Balance — December 31, 2014	1,516,823	3,845,709	0.30	7.33
Additional shares reserved (net of released)	231,052	—	—	
Options granted	(357,127)	357,127	0.90	
Options exercised	—	(2,965)	0.18	
Options forfeited/cancelled	28,579	(28,579)	0.95	
Balance — December 31, 2015	1,419,327	4,171,292	0.33	6.57
Additional shares reserved (net of released)	1,408,544	—	—	
Options granted	(1,531,169)	1,531,169	2.44	
Options exercised	—	(42,583)	0.25	
Options forfeited/cancelled	304,176	(304,176)	0.60	
Balance — December 31, 2016	1,600,878	5,355,702	$ 0.92	6.60

The fair value of options granted to employees was estimated at the date of grant using the following assumptions for the years ended December 31:

	2016	2015	2014
Expected terms (years)	5.54 — 6.08 years	5.83 — 6.58 years	5.69 — 6.07 years
Volatility	33.73 — 34.87%	34.91 — 43.52%	44.266 — 46.58%
Risk-free rate	1.18 — 1.86%	1.44 — 1.85%	1.67 — 1.97%
Dividend yield	—%	—%	—%

NOTE 13 – INCOME TAXES

The Company had an effective tax rate of 0.0% in each the three years ended December 31, 2016, 2015 and 2014, respectively.

Reconciliations of the provision for income taxes at the statutory rate to the Company's provision for income tax is as follows (in thousands):

	Years Ended December 31,		
	2016	2015	2014
U.S. Federal (tax benefit) provision at statutory rate	$(6,604)	$(3,795)	$(2,310)
State (tax benefit) income taxes, net of federal benefit	—	(83)	(396)

Stock-based compensation	53	27	37
Change in valuation allowance	6,813	4,064	2,706
Research and development credits	(277)	(224)	(42)
Other permanent differences	15	11	(5)
Total	$ —	$ —	$ —

The significant components of the net deferred tax asset are as follows (in thousands):

	December 31,	
	2016	2015
Gross deferred income tax assets		
Net operating loss carryforwards	$ 23,641	$ 17,562
Research and development credits	1,053	801
Property and equipment (depreciation)	(46)	(75)
Others	1,411	420
Total deferred tax assets	26,059	18,708
Valuation allowance	(26,059)	(18,708)
Total	$ —	$ —

A valuation allowance has been recorded for the entire amount of the Company's deferred tax assets as a result of uncertainties regarding the realization of the deferred tax assets. The change in the valuation allowance totaled $7,351,069, $4,033,342 and $2,602,184 for the years ended December 31, 2016, 2015 and 2014, respectively, principally due to increases in the valuation allowance associated with increased net operating losses.

As of December 31, 2016, the Company had net operating loss carryforwards for federal and state income tax reporting purposes of approximately $63,168,055 and $37,081,213 respectively. As of December 31, 2016, the Company also had Federal and California research and development tax credit carryforwards of approximately $662,756 and $592,132 respectively. The Federal net operating loss and tax credit carryforwards will expire at various dates beginning in 2025 through 2036. The California net operating loss carryforwards will expire at various dates beginning in 2017 through 2036. The California research and development tax credit carryforwards have no expiration date.

Utilization of the NOL and tax credit carryforwards may be subject to a substantial annual limitation due to ownership change limitations that may have occurred or that could occur in the future, as required by the Internal Revenue Code (the "Code"), as well as similar state provisions. In general, an "ownership change" as defined by 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.

Since the Company's formation, the Company has raised capital through the issuance of capital stock on several occasions which, combined with the purchasing stockholders' subsequent disposition of those shares, may have resulted in such an ownership change, or could result in an ownership change in the future upon subsequent disposition. The annual limitation may result in the expiration of NOL and tax credit carryforwards before utilization.

The Company has not completed a study to assess whether an ownership change has occurred or whether there have been multiple ownership changes since the Company's formation due to the complexity and cost associated with such a study, and the fact that there may be additional such ownership changes in the future. If the Company has experienced an ownership change at any time since its formation, utilization of the NOL or tax credit carryforwards to offset future taxable income and taxes, respectively, would be subject to an annual limitation under the Code, which is determined by first multiplying the value of the Company's stock at the time of the ownership change by the applicable long-term, tax-exempt rate, and then could be subject to additional adjustments, as required. Any limitation may result in expiration of all or a portion of the NOL or tax credit carryforwards before utilization.

The Company maintains a full valuation allowance for its deferred tax assets due to its historical losses and uncertainties surrounding its ability to generate future taxable income to realize these assets. Due to the existence of the valuation allowance, future changes in any unrecognized tax benefits and recognizable deferred tax benefits after the completion of an ownership change analysis is not expected to impact its effective tax rate.

The following table displays by contributing factor the changes in the valuation allowance for deferred tax assets since (in thousands):

	December 31,		
	2016	2015	2014
Balance at the beginning of the period	$18,708	$14,675	$12,073
Net operating loss generated	6,079	3,593	2,594

Research and development tax credit increase (decrease)	252	211	(87)
Depreciation and amortization increase (decrease)	30	(44)	(14)
Reserves and accruals increase	990	273	109
Balance at end of the period	$26,059	$18,708	$14,675

The following table reflects changes in the unrecognized tax benefits since January 1, 2015 (in thousands):

	December 31,	
	2016	2015
Gross amount of unrecognized tax benefits as of the beginning of the period	$ 800	$—
Increase related to current yeatr tax provision	744	—
Gross amount of unrecognized tax benefits as of the end of the period	$1,544	$—

The Company files income tax returns in the United States on federal basis and various states. The Company is not currently under any international or any United States federal, state and local income tax examinations for any taxable years. A number of the Company's tax returns remain subject to examination by taxing authorities: these include U.S. federal and state tax returns from 2012 forward.

NOTE 14 – RETIREMENT PLAN

The Company has a salary deferral plan under Section 401(k) of the Internal Revenue Code. The plan allows eligible employees to defer a portion of their compensation ranging from 1% to the maximum allowable dollar limit which is set by law. Such deferrals accumulate on a tax deferred basis until the employee withdraws the funds. The Company, at its option, may match a portion of the employees' contribution. During the years ended December 31, 2016, 2015 and 2014, the Company made no matching contributions.

NOTE 15 – MANAGEMENT INCENTIVE PLAN

On May 30, 2013, the Company adopted a management incentive plan that establishes a bonus pool with the objective of retaining its key employees and service providers through a potential Corporate Transaction, as defined in the plan. The plan provides for up to 7% of the total proceeds in a Corporate Transaction to be paid to key employees covered under the Plan. The plan was terminated in June 2015 as of the Company's IPO and as a result no amounts were paid under the plan.

NOTE 16 – RELATED PARTIES

Mrs. Lynae Dodson, the wife of Mr. Scott Dodson, chief executive officer and director, owns and operates a marketing consulting firm, Bridge Marketing. Bridge Marketing manages trade shows, social media and provides other market services for the Company. During the years ended December 31, 2016, 2015 and 2014 Bridge Marketing received payments of $192,501, $160,856 and $135,182 for marketing support services rendered to the Company. As of December 31, 2016, $9,030 was payable to Bridge Marketing and was included in accounts payable in the accompanying consolidated balance sheet. No amount was outstanding as of December 31, 2015. These amounts are including in selling, general and administrative costs in the accompanying consolidated statements of operations.

NOTE 17 – SUBSEQUENT EVENTS

In February 2017, the Company issued 16,304,348 shares of common stock in connection with an equity offering on the ASX. The Company raised a total of $34,110,065, net of issuance costs of $1,461,659.

In April 2017, the Company entered into a sublease for an additional approximately 24,000 square foot facility is San Jose, CA. The sublease expires in August 2019. Future minimum sublease payments under the sublease are approximately $57,000 in 2017, $360,000 in 2018, and $303,000 in 2019.

The Company has performed an evaluation of subsequent events through May 1, 2017, which is the date these consolidated financial statements were issued.

INDEX TO EXHIBITS

Exhibit No.	Description of Document
3.1	Amended and Restated Certificate of Incorporation
3.2	Amended and Restated By-Laws
4.1	Reference is made to Exhibits 3.1 and 3.2
4.3	Warrant to Purchase Stock, dated February 28, 2011, between AirXpanders, Inc. and Oxford Finance Funding I, LLC
4.4	Warrant to Purchase Stock, dated January 31, 2013, between AirXpanders, Inc. and Oxford Finance LLC
4.5	Warrant to Purchase Shares of Series E Preferred Stock, dated January 16, 2014, between AirXpanders, Inc. and GE Capital Equity Investments, Inc.
10.1*	2005 Equity Incentive Plan, as amended
10.2*	Form of 2005 Equity Incentive Plan Stock Option Agreement
10.3*	2015 Equity Incentive Plan and Australian Sub-Plan
10.4*	Form of 2015 Equity Incentive Plan Stock Option Agreement
10.5*	Offer Letter, dated September 28, 2010, as amended, between AirXpanders, Inc. and Scott Dodson
10.6*	Offer Letter, dated May 2, 2016, as amended, between AirXpanders, Inc. and Scott Murcray
10.7	License Agreement, dated March 9, 2005, between AirXpanders, Inc. and Shalon Ventures, Inc.
10.8	First Amendment to License Agreement, dated March 9, 2009, between AirXpanders, Inc. and Shalon Ventures, Inc.
10.9	Second Amendment to License Agreement, dated January 9, 2012, between AirXpanders, Inc. and Shalon Ventures, Inc.
10.10	Third Amendment to License Agreement, dated January 15, 2014, between AirXpanders, Inc. and Shalon Ventures, Inc.
10.11	Standard Industrial Lease, dated July 14, 2010, between AirXpanders, Inc. and McCandless Limited
10.12	First Amendment to Lease, dated May 1, 2013, between AirXpanders, Inc. and McCandless Limited
10.13	Second Amendment to Lease, dated July 1, 2015, between AirXpanders, Inc. and McCandless Limited
10.14	Form of Indemnity Agreement between AirXpanders, Inc. and each of its directors and executive officers
10.15**	Manufacturing and Supply Agreement, dated January 4, 2017, between AirXpanders, Inc. and Vention Medical Costa Rica, S.A.

* Indicates management contract or compensatory plan.

** Portions of this exhibit have been omitted pursuant to a request for confidential treatment, which portions were omitted and filed separately with the Securities and Exchange Commission

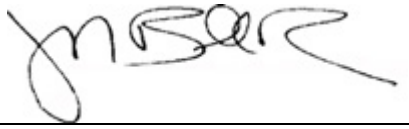
Exhibit 3.1

Delaware *PAGE 1*

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "AIRXPANDERS, INC.", FILED IN THIS OFFICE ON THE ELEVENTH DAY OF JUNE, A.D. 2015, AT 7:31 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



Jeffrey W. Bullock, Secretary of State

3941800 8100

150907586

You may verify this certificate online at corp.delaware.gov/authver.shtml

AUTHENTICATION: 2455822

DATE: 06-11-15

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:52 AM 06/11/2015
FILED 07:31 AM 06/11/2015
SRV 150907586 - 3941800 FILE

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
AIRXPANDERS, INC.

Scott Dodson hereby certifies that:

ONE: The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on March 17, 2005 under the original name of Expanders, Inc.

TWO: He is the duly elected and acting Chief Executive Officer of AirXpanders, Inc., a Delaware corporation.

THREE: The Certificate of Incorporation of this corporation is hereby amended and restated to read as follows:

I.

The name of this corporation is **AIRXPANDERS, INC.** (the "***Company***").

II.

The address of the registered office of the Company in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, and the name of the registered agent of the Company in the State of Delaware at such address is The Corporation Trust Company.

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "***DGCL***").

IV.

A. Effective at the time of filing of this Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, every five (5) shares of Common Stock (as defined below) issued and outstanding shall, automatically and without any action on the part of the respective holders thereof, be combined and converted into one (1) share of Common Stock without increasing or decreasing the par value of each share of Common Stock (the "***Reverse Split***"); *provided, however*, that the Company shall issue no fractional shares of Common Stock as a result of the Reverse Split, but shall instead pay to any stockholder who would be entitled to receive a fractional share as a result of the actions set forth herein a sum in cash equal to the fair market value of the shares constituting such fractional share as determined by the Board of Directors of the Company. The Reverse Split shall occur whether or not the certificates representing such shares of Common Stock are surrendered to the Company or its transfer agent. The Reverse Split shall be effected on a record holder-by-record holder basis, such that any fractional shares of Common Stock resulting from the Reverse Split and held by a single record holder shall be aggregated.

B. The Company is authorized to issue two classes of stock to be designated, respectively, "***Common Stock***" and "***Preferred Stock.***" The total number of shares that the Company is authorized to issue is three hundred ten million (310,000,000) shares. Three hundred million (300,000,000) shares shall be Common Stock, two hundred million (200,000,000) of which shall be Class A Common Stock, and one hundred million (100,000,000) of which shall be Class B Common Stock, each having a par value of $0.001 per share. Ten million (10,000,000) shares shall be Preferred Stock, each having a par value of $0.001 per share.

C. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Company (the "***Board of Directors***") is hereby expressly authorized to provide for the issue of all of any of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the Company entitled to vote thereon, without a separate vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock (a "***Certificate of Designation***").

D. Each outstanding share of Class A Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Company for their vote; *provided, however,* that, except as otherwise required by law, holders of Class A Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (the "***Restated Certificate***") (including any Certificate of Designation) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Restated Certificate (including any Certificate of Designation). Except as may be required by law, the Class B Common Stock shall not be entitled to any voting rights.

E. Subject to the rights of the Preferred Stock that may come into existence from time to time, the holders of Class A Common Stock shall be entitled to share, on a per share basis, in such dividends and other distributions of cash, property or shares of the corporation as may be declared thereon by the Board of Directors out of funds legally available therefor. The holders of Class B Common shall not be entitled to share in any dividends or other distributions of cash, property or shares of the corporation.

F. In connection with the corporation's Initial Public Offering (as defined below) of CHESS Depositary Interests (each a "***CDI***") (with each CDI representing an interest in one-third of a share of Class A Common Stock) certain stockholders of the corporation were required by the Australian Securities Exchange (the "***ASX***") to enter into an escrow agreement (each a "***Mandatory Escrow Agreement***") with the corporation under which the stockholder agreed, among other things, to certain restrictions and prohibitions from engaging in transactions in the shares of Class A Common Stock (including Class A Common Stock in the form of CDIs) held or acquired by the stockholder (including shares of Class A Common Stock that may be acquired upon exercise of a stock option, warrant or other right) or shares of Class A Common Stock which attach to or arise from such Class A Common Stock (collectively, the "***Restricted Securities***") for a period of time identified in the Mandatory Escrow Agreement (the "***Lock-Up Period***"). The Restricted Securities shall automatically and without further action be converted into shares of Class B Common Stock, on a one-for-one basis, if the Board of Directors of the corporation determines, in its sole discretion, that the stockholder breached or violated any term of such stockholder's Mandatory Escrow Agreement or breached the Official Listing Rules of the ASX relating to the Restricted Securities. Any shares of Class A Common Stock converted to Class B Common Stock pursuant to this Article IV Section E shall automatically and without further action be converted back into shares of Class A Common Stock, on a one-for-one basis, upon the earlier to occur of the expiration of the Lock-Up Period in the applicable Mandatory Escrow Agreement pursuant to which the shares of Class A Common Stock were originally converted to Class B Common Stock or the breach of the Official Listing Rules of the ASX relating to the Restricted Securities being remedied.

V.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. BOARD OF DIRECTORS

1. Generally. The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors that shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors constituting the Board of Directors.

2. Election.

a. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of an initial public offering pursuant to (i) an effective registration statement under the Securities Act of 1933, as amended (the "***1933 Act***"), covering the offer and sale of Class A Common Stock to the public or (ii) a prospectus under the Australian Corporations Act, covering the offers of

securities of the corporation received in Australia (in either case an "***Initial Public Offering***"), and for so long as permitted by applicable law, the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the filing of this Restated Certificate, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the filing of this Restated Certificate, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the filing of this Restated Certificate, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting. Directors shall be elected in accordance with this Restated Certificate and the Bylaws.

b. At any time that applicable law prohibits a classified board as described in Article V, Section (A)(2)(a), all directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

c. Notwithstanding the foregoing provisions of this section, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

3. Removal of Directors.

a. Subject to the rights of any series of Preferred Stock to elect additional directors under specified circumstances, neither the Board of Directors nor any individual director may be removed without cause.

b. Subject to any limitations imposed by applicable law, any individual director or directors may be removed with cause by the affirmative vote of the holders of at least 66 2/3% of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors.

4. Vacancies. Subject to any limitations imposed by applicable law and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even with less than a quorum of the Board of Directors, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

B. STOCKHOLDER ACTIONS. No action shall be taken by the stockholders of the Company except at an annual or special meeting of stockholders called in accordance with the Bylaws, and no action shall be taken by the stockholders by written consent or electronic transmission. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Company shall be given in the manner provided in the Bylaws of the Company.

C. BYLAWS. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. Any adoption, amendment or repeal of the Bylaws of the Company by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Company; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Restated Certificate, such action by stockholders shall require the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class.

VI.

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law.

B. To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and any other persons to which applicable law permits the Company to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. If applicable law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Company shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.

C. Any repeal or modification of this Article VI shall only be prospective and shall not affect the rights or protections or increase the liability of any director under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

D. Unless the Company consents 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: (1) any derivative action or proceeding brought on behalf of the Company; (2) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Company to the Company or the Company's stockholders; (3) any action asserting a claim against the Company arising pursuant to any provision of the DGCL, the Certificate of Incorporation or the Bylaws of the Company; or (5) any action asserting a claim against the Company governed by the internal affairs doctrine.

E. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Company shall be deemed to have notice of and to have consented to the provisions of this Certificate of Incorporation, including Section D of Article VI.

VII.

A. The Company reserves the right to amend, alter, change or repeal any provision contained in this Restated Certificate, in the manner now or hereafter prescribed by statute, except as provided in Article VII, Section B, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding any other provisions of this Restated Certificate or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Company required by law or by this Restated Certificate or any Certificate of Designation, the affirmative vote of the holders of at least 66 2/3% of the voting power of all of the then outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, and VII.

*** * * ***

FOUR: This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of this corporation.

FIVE: This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of this corporation.

AirXpanders, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 11th day of June, 2015.

AIRXPANDERS, INC.

By: /s/ Scott Dodson
Scott Dodson,
Chief Executive Officer

Exhibit 3.2

AMENDED AND RESTATED BYLAWS

OF

AIRXPANDERS, INC.
(A DELAWARE CORPORATION)

AMENDED AND RESTATED BYLAWS
OF
AIRXPANDERS, INC.
(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. If adopted, the corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("DGCL").

Section 5. Annual Meeting.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the

time of giving the stockholder's notice provided for in Section 5(b) below, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "1934 Act")) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting in accordance with the procedures below.

(1) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a), the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(3) and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class and number of shares of each class of capital stock of the corporation which are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition and (5) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 5(b)(4). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

(2) Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14(a)-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a), the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(3), and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 5(b)(4).

(3) To be timely, the written notice required by Section 5(b)(1) or 5(b)(2) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however,* that, subject to the last sentence of this Section 5(b)(3), in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(4) The written notice required by Section 5(b)(1) or 5(b)(2) shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "Proponent" and collectively, the "Proponents"): (A) the name and address of each Proponent, as they appear on the corporation's books; (B) the class, series and number of shares of the corporation that are owned beneficially and of record by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 5(b)(1)) or to propose the business that is specified in the notice (with respect to a notice under Section 5(b)(2)); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 5(b)(1)) or to carry such proposal (with respect to a notice under Section 5(b)(2)); (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

(c) A stockholder providing written notice required by Section 5(b)(1) or (ii) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five (5) business days prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five (5) business days after the

record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than two (2) business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) business days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 5(b)(3) to the contrary, in the event that the number of directors in an Expiring Class is increased and there is no public announcement of the appointment of a director to such class, or, if no appointment was made, of the vacancy in such class, made by the corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with Section 5(b)(3), a stockholder's notice required by this Section 5 and which complies with the requirements in Section 5(b)(1), other than the timing requirements in Section 5(b)(3), shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10^{th}) day following the day on which such public announcement is first made by the corporation. For purposes of this section, an "Expiring Class" shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

(e) A person shall not be eligible for election or re-election as a director unless the person is nominated either in accordance with clause (ii) of Section 5(a), or in accordance with clause (iii) of Section 5(a). Except as otherwise required by law, the chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 5(b)(4)(D) and 5(b)(4)(E), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

(f) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however,* that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 5(a)(iii).

(g) For purposes of Sections 5 and 6,

(1) "affiliates" and "associates" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the "1933 Act");

(2) "Derivative Transaction" means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial: (A) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation, (B) which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation, (C) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes, or (D) which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation, which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member, but excluding any trading directly in CHESS Depositary Interests representing shares of stock; and

(3) "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with ASX Limited ("ASX") or the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairperson of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

(b) The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7. No business may be transacted at such special meeting otherwise than specified in the notice of meeting.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers written notice to the Secretary of the corporation setting forth the information required by Section 5(b)(1). In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record may nominate a person or persons (as the case may

be), for election to such position(s) as specified in the corporation's notice of meeting, if written notice setting forth the information required by Section 5(b)(1) of these Bylaws shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The stockholder shall also update and supplement such information as required under Section 5(c). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(d) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however,* that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 6(c) of these Bylaws.

Section 7. Notice of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of the DGCL, the Certificate of Incorporation, or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given in accordance with Section 232 of the DGCL. Notice given by electronic transmission shall be deemed given: (a) if by facsimile telecommunication, when directed to a facsimile telecommunication number at which the stockholder has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (c) if by posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and (d) if by any other form of electronic transmission, when directed to the stockholder. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairperson of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

Section 9. Stockholder Action. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. A proxy shall be valid if such stockholder duly authorizes the person or persons to act for such stockholder, including in accordance with Section 212(c) of the DGCL. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by statute, by applicable stock exchange rules or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute, by applicable stock exchange rules or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

Section 10. Adjournment and Notice of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairperson of the meeting or by the vote of the holders of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 11. Voting Rights. The number of votes a stockholder may have, if any, is set forth in the Certificate of Incorporation. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 13 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Section 12. Joint Owners of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his or her act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

Section 13. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. The list of stockholders may be as of a specific record date, fixed pursuant to Section 40 of these Bylaws. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 14. Action Without Meeting. No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

Section 15. Organization.

(a) At every meeting of stockholders, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, the President, or, if the President is absent, a

chairperson of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairperson. The Chairperson of the Board may appoint the Chief Executive Officer as chairperson of the meeting. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the chairperson of the meeting, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairperson, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairperson shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairperson of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 16. Number and Term of Office. The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 17. Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 18. Classes of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the initial classification of the Board of Directors, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following such initial classification, the

term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following such initial classification, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

Notwithstanding the foregoing provisions of this section, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 19. Vacancies. Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock or as otherwise provided by applicable law, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even with less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders, *provided, however*, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships subject to such class or series election rights shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

Section 20. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, the Secretary, in his or her discretion, may either (a) require confirmation from the director prior to deeming the resignation effective, in which case the resignation will be deemed effective upon receipt of such confirmation, or (b) deem the resignation effective at the time of delivery of the resignation to the Secretary. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 21. Removal.

(a) Subject to the rights of holders of any series of Preferred Stock to elect additional directors under specified circumstances, neither the Board of Directors nor any individual director may be removed without cause.

(b) Subject to any limitation imposed by applicable law, any individual director or directors may only be removed from office with cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all then outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors, voting together as a single class.

Section 22. Meetings

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system, or by any other system designed to record and communicate messages, including facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairperson of the Board, the Chief Executive Officer or a majority of the authorized number of directors.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be communicated to all directors orally or in writing, by telephone, including a voice messaging system, or by any other system or technology designed to record and communicate messages, including facsimile, telegraph or telex, or by electronic mail or other electronic means, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, postage prepaid at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if

a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 23. Quorum and Voting.

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 46 for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined and all actions made by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 24. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 25. Fees and Compensation. Subject to the Listing Rules of ASX (the "Listing Rules"), Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 26. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the

power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have and may exercise such powers and authority and perform such duties of the Board of Directors in the management of the business and affairs of the corporation as may be prescribed by the Board of Directors resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Membership. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 26 may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 26 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 27. Duties of Chairperson of the Board of Directors. The Chairperson of the Board of Directors, if appointed and when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairperson of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

Section 28. Lead Independent Director. The Chairperson of the Board of Directors, or if the Chairperson is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors ("Lead Independent Director"). The Lead Independent Director will: with the Chairperson of the Board of Directors, establish the agenda for regular Board meetings and serve as chairperson of Board of Directors meetings in the absence of the Chairperson of the Board of Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and perform such other duties as may be established or delegated by the Chairperson of the Board or the Board of Directors.

Section 29. Organization. At every meeting of the directors, the Chairperson of the Board of Directors, or, if a Chairperson has not been appointed or is absent, the Lead Independent Director, of if the Lead Independent Director is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairperson of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary or other officer, director or other person directed to do so by the person presiding over the meeting, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 30. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairperson, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors or committee thereof to which the Board of Directors has delegated such responsibility.

Section 31. Tenure and Duties of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairperson of the Board of Directors or the Lead Independent Director has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors (if a director), unless the Chairperson of the Board of Directors, the Lead Independent Director, or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(d) Duties of Vice Presidents. A Vice President may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. A Vice President shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The Chief Executive Officer, or if no Chief Executive Officer is then serving, the President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary

in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the controller or any assistant controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each controller and assistant controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President shall designate from time to time.

(g) Duties of Treasurer. Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President and Chief Financial Officer (if not Treasurer) shall designate from time to time.

Section 32. Delegation of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 33. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the Chief Executive Officer, or if no Chief Executive Officer is then serving, the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 34. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 35. Execution of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation. All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do. Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 36. Voting of Securities Owned by the Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairperson of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

SHARES OF STOCK

Section 37. Form and Execution of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificate shall be entitled to have a certificate signed by or in the name of the corporation by the Chairperson of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar

who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 38. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 39. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon the corporation's books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares. As a condition precedent to the transfer, the corporation or its designee may require the transferor or the transferor's legal representative to provide evidence of transfer or agree to indemnify the corporation or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the stock transferred.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL or the Listing Rules.

(c) The Board of Directors may, to the fullest extent permitted by applicable law, in its absolute discretion refuse to register any transfer of shares of stock or other securities where the shares of stock or other securities are not quoted by ASX. Where the shares of stock or other securities are quoted by ASX, the Board of Directors may refuse to register any transfer if (a) permitted or required to do so by the Listing Rules or ASX, or (b) the registration of the transfer would result in a contravention of or failure of any applicable law or the Listing Rules

Section 40. Restricted Securities

(a) Definitions. For the purposes of this Section 40, the following definitions shall apply:

(1) The term "dispose" shall have the meaning given in the Listing Rules.

(2) The term "escrow period" shall, in relation to Restricted Securities, means the escrow period applicable to those Restricted Securities under the Listing Rules.

(3) The term "Restricted Securities" shall have the meaning given in the Listing Rules.

(4) The term "restriction agreement" shall mean a restriction agreement applicable to those Restricted Securities, in a form set out in the Listing Rules or otherwise approved by ASX.

(b) A holder of Restricted Securities cannot dispose of their Restricted Securities during the escrow period attaching to those Restricted Securities except as permitted by the Listing Rules or ASX.

(c) Except as permitted by the Listing Rules or ASX, the corporation will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities during the escrow period for those Restricted Securities.

Section 41. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede (i) the fifth (5^{th}) ASX Business Day following the date upon which the record date is notified to ASX, or (ii) if the corporation is not admitted to the official list of ASX, the date upon which the resolution fixing the record date is adopted. The record date shall be not more than sixty (60) days prior to the action for which the record date is required. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the first day permitted under this Section 41(b). For the purpose of this Section 41, the term "ASX Business Day" shall have the meaning given to the term "business day" under the Listing Rules.

Section 42. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise required by the laws of Delaware, the Listing Rules or ASX.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 43. Execution of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 37), may be signed by the Chairperson of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 44. Declaration of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 45. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

Section 46. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 47. Indemnification of Directors, Officers, Employees and Other Agents.

(a) Directors and Officers. The corporation shall indemnify its directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, *provided, further,* that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under paragraph (d) of this Section 47.

(b) Employees and other Agents. The corporation shall have power to indemnify its employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer, of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 47 or otherwise. Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section 47, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation in which event this sentence shall not apply)

in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Section 47 shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Section 47 to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his or her conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Section 47 or otherwise shall be on the corporation.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Section 47 shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Section 47 shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 47.

(h) Amendments. Any repeal or modification of this Section 47 shall only be prospective and shall not affect the rights under this Section 47 in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Saving Clause. If this Section 47 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Section 47 that shall not have been invalidated, or by any other applicable law. If this Section 47 shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

(j) Certain Definitions. For the purposes of this Section 47, the following definitions shall apply:

(1) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 47 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a "director," "executive officer," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this section.

ARTICLE XII

NOTICES

Section 48. Notices.

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by United States mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a) or as otherwise provided in these Bylaws. If such notice is not delivered personally, it shall be sent to such number or address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known number or address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and number or address or the names and numbers or addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 49. Amendments. Subject to the limitations set forth in Section 47(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

ASX LISTING RULES

Section 50. Listing Rules prevail.

If the corporation is admitted to the official list of ASX, the following apply:

(a) Notwithstanding anything contained in the Bylaws or the Certificate of Incorporation, if the Listing Rules prohibit an act being done, the act shall not be done.

(b) Nothing contained in the Bylaws or the Certificate of Incorporation prevents an act being done that the Listing Rules require to be done.

(c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).

(d) If the Listing Rules require the Bylaws or the Certificate of Incorporation to contain a provision and they do not contain such a provision, the Bylaws or the Certificate of Incorporation (as the case may be) is deemed to contain that provision.

(e) If the Listing Rules require the Bylaws and the Certificate of Incorporation not to contain a provision and either contains such a provision, the Bylaws or the Certificate of Incorporation (as the case may be) is deemed not to contain that provision.

(f) If any provision of the Bylaws and the Certificate of Incorporation is or becomes inconsistent with the Listing Rules, the Bylaws and the Certificate of Incorporation (as the case may be) are deemed not to contain that provision to the extent of the inconsistency.

Exhibit 4.3

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED {THE "ACT'), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK

Company:	AirXpanders, Inc., a Delaware corporation
Number of Shares:	480,000, subject to adjustment
Class of Stock:	Series C Preferred Stock, $0.001 par value per share
Warrant Price:	$0.25, subject to adjustment
Issue Date:	April 22, 2011 (Original Issue Date was February 28, 2011)
Expiration Date:	February 28, 2021
Credit Facility:	This Warrant is issued in connection with that certain Second Loan Modification Agreement, of even date herewith, to that certain Loan and Security Agreement dated February 28, 2011, between Oxford Finance Corporation and the Company (the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, OXFORD FINANCE FUNDING I, LLC (together with any successor or permitted assignee or transferee of this Warrant, "Holder") is entitled to purchase the number of fully paid and non-assessable shares (the "Shares") of the above-stated Class of Stock (the "Class") of the above-named company (the "Company") at the above-stated Warrant Price per Share, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Article 1.3.

1.3 Fair Market Value. If the Company's common stock is traded in a public market and the Shares are common stock, the fair market value of a Share shall be the closing price of a share of common stock reported for the business day immediately before Holder delivers this Warrant together with its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the consummation of the Company's initial, underwritten offering and sale of its shares to the public pursuant to an effective registration statement under the Act ("IPO"), the "price to public" per share price specified in the final prospectus relating to such offering). If the Company's common stock is traded in a public market and the Shares are preferred stock, the fair market value of a Share shall be the closing price of a share of the Company's common stock reported for the business day immediately before Holder delivers this Warrant together with its Notice of Exercise to the Company (or, in the instance where the Warrant is exercised immediately prior to the effectiveness of the IPO, the initial "price to public" per share price specified in the final prospectus relating to such offering), in both cases, multiplied by the number of shares of the Company's common stock into which a Share is convertible. If the Company's common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any sale, license, or other disposition of all or substantially all of the assets of the Company, or any reorganization, consolidation, merger or sale of outstanding capital stock of the Company where the holders of the Company's outstanding voting equity securities as of immediately before the transaction beneficially own less than a majority of the outstanding voting equity securities of the surviving or successor entity as of immediately after the transaction.

1.6.2 Treatment of Warrant at Acquisition.

A) Holder agrees that, in the event of an Acquisition in which the sole consideration is cash and/or Marketable Securities, either (a) Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition or (b) if Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Acquisition. The Company shall provide Holder with written notice of its request relating

to the foregoing (together with such reasonable information as Holder may request in connection with such contemplated Acquisition giving rise to such notice), which is to be delivered to Holder not less than ten (10) days prior to the closing of the proposed Acquisition.

B) Upon the closing of any Acquisition other than as particularly described in subsection (A) above, the successor entity shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on the record date for the Acquisition and subsequent closing, and the Warrant Price and/or number of Shares shall be adjusted accordingly and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant.

C) As used in this Article 1.6, "Marketable Securities" means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise or convert this Warrant on or prior to the closing thereof is then traded on a national securities exchange or over-the-counter market, and (iii) Holder would not be restricted by contract or by applicable federal and state securities laws from publicly re-selling, within six (6) months and one day following the closing of such Acquisition, all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise or convert this Warrant in full on or prior to the closing of such Acquisition.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of the Class payable in common stock or other securities, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include, without limitation, any automatic conversion of the outstanding or issuable securities of the Company of

the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation. The Company or its successor shall promptly issue to Holder a certificate pursuant to Article 2.6 below setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The number of shares of common stock issuable upon conversion of the Shares shall be subject to adjustment, from time to time in the manner set forth in the Company's Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article against impairment. Notwithstanding the foregoing, nothing in this Section 2.4 shall prohibit the Company from amending its Certificate of Incorporation with the requisite consent of the stockholders and the Board of Directors so long as such amendment affects the rights granted to Holder associated with the Shares in the same manner as the other holders of the Class.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share.

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price, Class and number of Shares in effect upon the date thereof and the series of adjustments leading to such Warrant Price, Class and number of Shares.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

(a) The Warrant Price first set forth above is not greater than the price per share at which shares of the Class were last issued in an arms-length transaction in which at least $500,000 of such shares were sold.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws.

(c) The Company's capitalization table attached hereto as Schedule 1 is true and complete as of the Original Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon the outstanding shares of the Class, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription or sale pro rata to the holders of the outstanding shares of the Class any additional shares of any class or series of the Company's stock (other than pursuant to contractual pre-emptive rights); (c) to effect any reclassification, reorganization or recapitalization of the shares of the Class; (d) to effect an Acquisition or to liquidate, dissolve or wind up; or (e) offer holders of registration rights the opportunity to participate in an underwritten public offering of the Company's securities for cash, then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of shares of the Class will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (c) and (d) above; (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event); and (3) in the case of the matter referred to in (e) above, the same notice as is given to the holders of such registration rights.

3.3 Registration Under Securities Act of 1933, as amended. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have certain "piggyback," and S-3 registration rights pursuant to and as set forth in the Company's Amended and Restated Investor Rights Agreement, as amended and in effect from time to time, with the following exceptions and clarifications: (a) Holder will not have the right to demand or participate in demanding registration on Form S-1, but can otherwise participate in any registration demanded on Form S-1 by others on the same basis as other "Holders" and (b) Holder will be subject to the same provisions regarding indemnification and limitations contained in the Investor Rights Agreement. The provisions set forth in the Company's Investor Rights Agreement or similar agreement relating to the above in effect as of the Issue Date may not be amended, modified or waived without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification, or waiver affects the rights associated with all other shares of Class whose holders are parties thereto.

3.4 No Shareholder Rights. Except as provided in this Warrant, Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

3.5 Certain Information. The Company agrees to provide Holder at any time and from time to time with such information as Holder may reasonably request for purposes of Holder's compliance with regulatory, accounting and reporting requirements applicable to Holder. In handling any confidential information of Borrower, the Holder shall exercise the same degree of care that it exercises for their own proprietary information, as specified in Section 12.9 of the Loan Agreement.

ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

4.6 Lock-Up Agreement. In connection with the Company's IPO and upon request of the Company or the underwriters managing such offering of the Company's securities, the Holder agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company, however or whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days but subject to such extension or extensions as may be required by the underwriters in order to publish research reports while complying with the Rule 2711 of the National Association of Securities Dealers, Inc.) from the effective date of such registration statement as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's IPO; provided, that the foregoing provisions of this Article 4.6 shall not prevent or restrict Holder from transferring this Warrant or any Shares acquired upon any exercise or conversion hereof to one or more affiliates of Holder during such 180-day period (and such transferees shall be subject to the provisions hereof). The obligations described in this Article 4.6 shall apply only if all officers and Directors of the Company and all greater than 1% stockholders enter into and are bound by similar agreements (and upon request of the Holder the Company shall confirm the same in writing to the Holder).

ARTICLE 5. MISCELLANEOUS.

5.1 Term: This Warrant is exercisable in whole or in part at any time and from time to time on or before the Expiration Date.

5.2 Legends. This Warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

> THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 OF THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE COMPANY TO OXFORD FINANCE FUNDING I, LLC DATED AS OF APRIL 22, 2011, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of

investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act.

5.4 Transfer Procedure. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, Holder may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the securities issuable directly or indirectly, upon conversion of the Shares, if any) to any transferee, provided, however, in connection with any such transfer, Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). The Company may refuse to transfer this Warrant or the Shares to any person who directly competes with the Company, unless, in either case, the stock of the Company is publicly traded.

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid (or on the first business day after transmission by facsimile), at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such holder from time to time. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Oxford Finance Funding I, LLC
Attn: Vice President and General Counsel
133 North Fairfax Street
Alexandria, VA 22314
Telephone: 703-519-6082
Facsimile: 703-519-5225

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

AirXpanders, Inc.
1047 Elwell Court
Palo Alto, California 94303
Telephone:
Facsimile:

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Article 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Article 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to Holder.

5.9 Counterparts. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement.

[Remainder of page left blank intentionally]

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its principles regarding conflicts of law.

"COMPANY"

AIRXPANDERS, INC.

By: /s/ Scott Dodson
Name: Scott Dodson
Title: Chief Financial Officer

"HOLDER"

OXFORD FINANCE FUNDING I, LLC

By: /s/ TAL

Name: T. A. Lex
(Print)

Title: COO

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase shares of the Common/Series Preferred [strike one] Stock of pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the Shares in the name specified below:

Holders Name

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as of the date hereof.

HOLDER:

By:

Name:

Title:

(Date):

SCHEDULE 1

Company Capitalization Table
(as of Original Issue Date)

	Shares	Fully Diluted %
Series A Preferred	3,908,168	7.58%
Series A Warrant	415,790	0.81%
Series B Preferred	3,125,954	6.06%
Series B Warrant	250,000	0.48%
Series B-1 Preferred	9,554,375	18.52%
Series C Preferred	22,245,718	43.12%
Series C Warrant (1)	480,000	0.93%
Common	4,452,859	8.63%
Options/SPRs Outstanding	1,497,823	2.90%
Options/SPRs Reserved	5,655,029	10.96%
TOTAL	**51,585,716**	**100.00%**

(1) Issued to the original holder on Original Issue Date.

Exhibit 4.4

THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 BELOW, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

WARRANT TO PURCHASE STOCK

Company: AirXpanders, Inc., a Delaware corporation
Number of Shares: 148,148, subject to adjustment
Class of Stock: Series D Preferred Stock, $0.001 par value per share, subject to adjustment
Warrant Price: $0.27, subject to adjustment
Issue Date: January 31, 2013
Expiration Date: January 31, 2023
Credit Facility: This Warrant is issued in connection with that certain Fourth Loan Modification Agreement, of even date herewith, to that certain Loan and Security Agreement dated February 28, 2011, between Oxford Finance LLC, a Delaware limited liability company (as successor in interest to Oxford Finance Corporation, a Delaware corporation) and the Company (the "Loan Agreement").

THIS WARRANT CERTIFIES THAT, for good and valuable consideration, OXFORD FINANCE LLC (together with any successor or permitted assignee or transferee of this Warrant, "Holder") is entitled to purchase the number of fully paid and non-assessable shares (the "Shares") of the above-stated Class of Stock (the "Class") of the above-named company (the "Company") at the above-stated Warrant Price per Share, all as set forth above and as adjusted pursuant to Article 2 of this Warrant, subject to the provisions and upon the terms and conditions set forth in this Warrant.

ARTICLE 1. EXERCISE.

1.1 Method of Exercise. Holder may exercise this Warrant by delivering the original of this Warrant together with a duly executed Notice of Exercise in substantially the form attached as Appendix 1 to the principal office of the Company. Unless Holder is exercising the conversion right set forth in Article 1.2, Holder shall also deliver to the Company a check, wire transfer (to an account designated by the Company), or other form of payment acceptable to the Company for the aggregate Warrant Price for the Shares being purchased.

1.2 Conversion Right. In lieu of exercising this Warrant as specified in Article 1.1, Holder may from time to time convert this Warrant, in whole or in part, into a number of Shares determined by dividing (a) the aggregate fair market value of the

Shares or other securities otherwise issuable upon exercise of this Warrant minus the aggregate Warrant Price of such Shares by (b) the fair market value of one Share. The fair market value of the Shares shall be determined pursuant to Article 1.3.

1.3 Fair Market Value. If the Company's common stock is traded in a public market and the Shares are common stock, the fair market value of a Share shall be the closing price of a share of common stock reported for the Business Day immediately before Holder delivers this Warrant together with its Notice of Exercise to the Company (or in the instance where the Warrant is exercised immediately prior to the consummation of the Company's initial, underwritten offering and sale of its shares to the public pursuant to an effective registration statement under the Act ("IPO"), the "price to public" per share price specified in the final prospectus relating to such offering). If the Company's common stock is traded in a public market and the Shares are preferred stock, the fair market value of a Share shall be the closing price of a share of the Company's common stock reported for the business day immediately before Holder delivers this Warrant together with its Notice of Exercise to the Company (or, in the instance where the Warrant is exercised immediately prior to the effectiveness of the IPO, the initial "price to public" per share price specified in the final prospectus relating to such offering), in both cases, multiplied by the number of shares of the Company's common stock into which a Share is convertible. If the Company's common stock is not traded in a public market, the Board of Directors of the Company shall determine fair market value in its reasonable good faith judgment.

1.4 Delivery of Certificate and New Warrant. Promptly after Holder exercises or converts this Warrant and, if applicable, the Company receives payment of the aggregate Warrant Price, the Company shall deliver to Holder certificates for the Shares acquired and, if this Warrant has not been fully exercised or converted and has not expired, a new warrant of like tenor representing the Shares not so acquired.

1.5 Replacement of Warrants. On receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and, in the case of loss, theft or destruction, on delivery of an indemnity agreement reasonably satisfactory in form and amount to the Company or, in the case of mutilation, on surrender and cancellation of this Warrant, the Company shall execute and deliver, in lieu of this Warrant, a new warrant of like tenor.

1.6 Treatment of Warrant Upon Acquisition of Company.

1.6.1 "Acquisition". For the purpose of this Warrant, "Acquisition" means any transaction or series of related transactions involving: (i) the sale, lease, exclusive license, or other disposition of all or substantially all of the assets of the Company (ii) any merger or consolidation of the Company into or with another person or entity (other than a merger or consolidation effected exclusively to change the Company's domicile), or any other corporate reorganization, in which the stockholders of the Company in their capacity as such immediately prior to such merger, consolidation or reorganization, own less than a majority of the Company's (or the surviving or successor entity's) outstanding voting power immediately after such merger, consolidation or reorganization (or, if such Company stockholders beneficially own a majority of the outstanding voting power of the surviving or successor entity as of immediately after such merger, consolidation or reorganization, such surviving or successor entity is not the Company); or (iii) any sale or other transfer by the stockholders of the Company of shares representing at least a majority of the Company's then-total outstanding combined voting power.

1.6.2 Treatment of Warrant at Acquisition.

A) In the event of an Acquisition in which the consideration to be received by the Company's stockholders consists solely of cash, solely of Marketable Securities or a combination of cash and Marketable Securities (a "Cash/Public Acquisition"), either (i) Holder shall exercise this Warrant pursuant to Article 1.1 and/or 1.2 and such exercise will be deemed effective immediately prior to and contingent upon the consummation of such Acquisition or (ii) if Holder elects not to exercise the Warrant, this Warrant will expire immediately prior to the consummation of such Acquisition.

B) The Company shall provide Holder with written notice of its request relating to the Cash/Public Acquisition (together with such reasonable information as Holder may reasonably require regarding the treatment of this Warrant in connection with such contemplated Cash/Public Acquisition giving rise to such notice), which is to be delivered to Holder not less than seven (7) Business Days prior to the closing of the proposed Cash/Public Acquisition. In the event the Company does not provide such notice, then if, immediately prior to the Cash/Public Acquisition, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Article 1.3 above would be greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be exercised pursuant to Article 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised, and the Company shall promptly notify the Holder of the number of Shares (or such other securities) issued upon such exercise to the Holder and Holder shall be deemed to have restated each of the representations and warranties in Article 4 of the Warrant as the date thereof.

C) Upon the closing of any Acquisition other than a Cash/Public Acquisition defined above, the acquiring, surviving or successor entity shall assume the obligations of this Warrant, and this Warrant shall thereafter be exercisable for the same securities and/or other property as would have been paid for the Shares issuable upon exercise of the unexercised portion of this Warrant as if such Shares were outstanding on and as of the closing of such Acquisition, subject to further adjustment from time to time in accordance with the provisions of this Warrant.

D) As used in this Warrant, "Marketable Securities" means securities meeting all of the following requirements: (i) the issuer thereof is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in its filing of all required reports and other information under the Act and the Exchange Act; (ii) the class and series of shares or other security of the issuer that would be received by Holder in connection with the Acquisition were Holder to exercise this Warrant on or prior to the closing thereof is then traded in Trading Market, and (iii) Holder would be able to publicly re-sell, within six (6) months following the closing of such Acquisition, all of the issuer's shares and/or other securities that would be received by Holder in such Acquisition were Holder to exercise this Warrant in full on or prior to the closing of such Acquisition.

1.7 Adjustment to Class of Shares; Number of Shares; Warrant Price; Adjustments Cumulative. In the event of a preferred stock equity financing by the

Company after the Issue Date the gross proceeds of which equal at least Five Million Dollars ($5,000,000) (the "Next Round"), if the price per share (the "Next Round Price") of such shares of preferred stock (the "Next Round Stock") is less than the Warrant Price, Holder shall have the right, in Holder's sole discretion, to elect to treat all of this Warrant as exercisable for Shares of the Next Round Stock at the Next Round Price (with the number of such shares subject of this Warrant automatically adjusted to equal (i) the aggregate Number of Shares for which this Warrant is then exercisable (as adjusted hereunder, but before giving effect to this Article 1.7) multiplied by (ii) the quotient of (x) the Warrant Price divided by (y) the Next Round Price) (the "Next Round Election"). Company shall provide Holder no less than fifteen (15) Business Days' written notice prior to any sale of Next Round Stock (the "Next Round Notice"). Holder shall make the Next Round Election by providing the Company with written notice within ten (10) Business Days' of its receipt of the Next Round Notice (the "Next Round Election Period") and Holder shall be deemed to waive it right to make such Next Round Election if it fails to deliver its Next Round Election within the Next Round Election Period. If Holder makes the Next Round Election within the Next Round Election Period, then (a) the Next Round Election shall be effective immediately following the initial closing of the Next Round and (b) the Shares for which this Warrant is exercisable shall bear the same rights, preferences, and privileges of such Next Round Stock. The right of Holder to make a Next Round Election (and the corresponding adjustment provided for in this Article 1.7) shall (i) only apply to the first Next Round that occurs after the Issue Date and shall not apply to any other financing and (ii) shall terminate (x), in the case of the occurrence of an Acquisition, then upon the satisfaction of the provisions of Article 1.6 hereof and (y) in the case of the occurrence of an IPO, then upon the satisfaction of Article 2.2 hereof. Any adjustment to the Class of Shares, Number of Shares and/or Warrant Price made as a result of this Article 1.7 shall be in addition to any adjustment(s) to be made in accordance with Article 2 hereof.

ARTICLE 2. ADJUSTMENTS TO THE SHARES.

2.1 Stock Dividends, Splits, Etc. If the Company declares or pays a dividend on the outstanding shares of the Class payable in common stock or other securities, then upon exercise of this Warrant, for each Share acquired, Holder shall receive, without cost to Holder, the total number and kind of securities to which Holder would have been entitled had Holder owned the Shares of record as of the date the dividend occurred. If the Company subdivides the outstanding shares of the Class by reclassification or otherwise into a greater number of shares, the number of Shares purchasable hereunder shall be proportionately increased and the Warrant Price shall be proportionately decreased. If the outstanding shares of the Class are combined or consolidated, by reclassification or otherwise, into a lesser number of shares, the Warrant Price shall be proportionately increased and the number of Shares shall be proportionately decreased.

2.2 Reclassification, Exchange, Combinations or Substitution. Upon any reclassification, exchange, substitution, or other event that results in a change of the number and/or class of the securities issuable upon exercise or conversion of this Warrant, Holder shall be entitled to receive, upon exercise or conversion of this Warrant, the number and kind of securities and property that Holder would have received for the Shares if this Warrant had been exercised immediately before such reclassification, exchange, substitution, or other event. Such an event shall include, without limitation, any automatic conversion of the outstanding or issuable securities of the Company of

the same class or series as the Shares to common stock pursuant to the terms of the Company's Certificate of Incorporation. The Company or its successor shall promptly issue to Holder a certificate pursuant to Article 2.6 below setting forth the number and kind of such new securities or other property issuable upon exercise or conversion of this Warrant as a result of such reclassification, exchange, substitution or other event that results in a change of the number and/or class of securities issuable upon exercise or conversion of this Warrant. The provisions of this Article 2.2 shall similarly apply to successive reclassifications, exchanges, substitutions, or other events.

2.3 Adjustments for Diluting Issuances. The number of shares of common stock issuable upon conversion of the Shares shall be subject to adjustment, from time to time in the manner set forth in the Company's Certificate of Incorporation as if the Shares were issued and outstanding on and as of the date of any such required adjustment.

2.4 No Impairment. The Company shall not, by amendment of its Certificate of Incorporation or through a reorganization, transfer of assets, consolidation, merger, dissolution, issue, or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed under this Warrant by the Company, but shall at all times in good faith assist in carrying out of all the provisions of this Article 2 and in taking all such action as may be necessary or appropriate to protect Holder's rights under this Article against impairment. Notwithstanding the foregoing, nothing in this Article 2.4 shall prohibit the Company from amending its Certificate of Incorporation with the requisite consent of the stockholders and the Board of Directors so long as such amendment affects the rights granted to Holder associated with the Shares in the same manner as the other holders of the Class.

2.5 Fractional Shares. No fractional Shares shall be issuable upon exercise or conversion of the Warrant and the number of Shares to be issued shall be rounded down to the nearest whole Share. If a fractional share interest arises upon any exercise or conversion of the Warrant, the Company shall eliminate such fractional share interest by paying Holder the amount computed by multiplying the fractional interest by the fair market value of a full Share (as determined in accordance with Article 1.3 above).

2.6 Certificate as to Adjustments. Upon each adjustment of the Warrant Price, Class and/or number of Shares, the Company shall promptly notify Holder in writing, and, at the Company's expense, promptly compute such adjustment, and furnish Holder with a certificate of its Chief Financial Officer setting forth such adjustment and the facts upon which such adjustment is based. The Company shall, upon written request, furnish Holder a certificate setting forth the Warrant Price, Class and number of Shares in effect upon the date thereof and the series of adjustments leading to such Warrant Price, Class and number of Shares.

ARTICLE 3. REPRESENTATIONS AND COVENANTS OF THE COMPANY.

3.1 Representations and Warranties. The Company represents and warrants to, and agrees with, the Holder as follows:

(a) The Warrant Price first set forth above is not greater than the price per share at which shares of the Class were last issued in an arms-length transaction in which at least $500,000 of such shares were sold.

(b) All Shares which may be issued upon the exercise of the purchase right represented by this Warrant, and all securities, if any, issuable upon conversion of the Shares, shall, upon issuance, be duly authorized, validly issued, fully paid and non-assessable, and free of any liens and encumbrances except for restrictions on transfer provided for herein or under applicable federal and state securities laws. The Company covenants that it shall at all times cause to be reserved and kept available out of its authorized and unissued capital stock such number of shares of the Class, common stock and other securities as will be sufficient to permit the exercise in full of this Warrant and the conversion of the Shares into common stock or such other securities.

(c) The Company's capitalization table attached hereto as Schedule 1 is true and complete as of the Issue Date.

3.2 Notice of Certain Events. If the Company proposes at any time (a) to declare any dividend or distribution upon the outstanding shares of the Class, whether in cash, property, stock, or other securities and whether or not a regular cash dividend; (b) to offer for subscription or sale pro rata to the holders of the outstanding shares of the Class any additional shares of any class or series of the Company's stock (other than pursuant to contractual pre-emptive rights); (c) to effect any reclassification, reorganization or recapitalization of the shares of the Class; (d) to effect an Acquisition or to liquidate, dissolve or wind up; or (e) offer holders of registration rights the opportunity to participate in an underwritten public offering of the Company's securities for cash, then, in connection with each such event, the Company shall give Holder: (1) at least 10 days prior written notice of the date on which a record will be taken for such dividend, distribution, or subscription rights (and specifying the date on which the holders of shares of the Class will be entitled thereto) or for determining rights to vote, if any, in respect of the matters referred to in (c) and (d) above; (2) in the case of the matters referred to in (c) and (d) above at least 10 days prior written notice of the date when the same will take place (and specifying the date on which the holders of shares of the Class will be entitled to exchange their shares for the securities or other property deliverable upon the occurrence of such event); and (3) in the case of the matter referred to in (e) above, the same notice as is given to the holders of such registration rights.

3.3 Registration Under Securities Act of 1933, as amended. The Company agrees that the Shares or, if the Shares are convertible into common stock of the Company, such common stock, shall have certain "piggyback," and S-3 registration rights pursuant to and as set forth in the Company's Amended and Restated Investor Rights Agreement, as amended and in effect from time to time, with the following exceptions and clarifications: (a) Holder will not have the right to demand or participate in demanding registration on Form S-1, but can otherwise participate in any registration demanded on Form S-1 by others on the same basis as other "Holders" and (b) Holder will be subject to the same provisions regarding indemnification and limitations contained in the Investor Rights Agreement. The provisions set forth in the Company's Investor Rights Agreement or similar agreement relating to the above in effect as of the Issue Date may not be amended, modified or waived without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Shares in the same manner as such amendment, modification, or waiver affects the rights associated with all other shares of Class whose holders are parties thereto.

3.4 No Shareholder Rights. Except as provided in this Warrant, Holder will not have any rights as a shareholder of the Company until the exercise of this Warrant.

3.5 Certain Information. The Company agrees to provide Holder at any time and from time to time with such information as Holder may reasonably request for purposes of Holder's compliance with regulatory, accounting and reporting requirements applicable to Holder. In handling any confidential information of Borrower, the Holder shall exercise the same degree of care that it exercises for their own proprietary information, as specified in Section 12.9 of the Loan Agreement.

ARTICLE 4. REPRESENTATIONS, WARRANTIES OF THE HOLDER. The Holder represents and warrants to the Company as follows:

4.1 Purchase for Own Account. This Warrant and the securities to be acquired upon exercise of this Warrant by Holder will be acquired for investment for Holder's account, not as a nominee or agent, and not with a view to the public resale or distribution within the meaning of the Act. Holder also represents that it has not been formed for the specific purpose of acquiring this Warrant or the Shares.

4.2 Disclosure of Information. Holder has received or has had full access to all the information it considers necessary or appropriate to make an informed investment decision with respect to the acquisition of this Warrant and its underlying securities. Holder further has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of this Warrant and its underlying securities and to obtain additional information (to the extent the Company possessed such information or could acquire it without unreasonable effort or expense) necessary to verify any information furnished to Holder or to which Holder has access.

4.3 Investment Experience. Holder understands that the purchase of this Warrant and its underlying securities involves substantial risk. Holder has experience as an investor in securities of companies in the development stage and acknowledges that Holder can bear the economic risk of such Holder's investment in this Warrant and its underlying securities and has such knowledge and experience in financial or business matters that Holder is capable of evaluating the merits and risks of its investment in this Warrant and its underlying securities and/or has a preexisting personal or business relationship with the Company and certain of its officers, directors or controlling persons of a nature and duration that enables Holder to be aware of the character, business acumen and financial circumstances of such persons.

4.4 Accredited Investor Status. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

4.5 The Act. Holder understands that this Warrant and the Shares issuable upon exercise or conversion hereof have not been registered under the Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of the Holder's investment intent as expressed herein. Holder understands that this Warrant and the Shares issued upon any exercise or

conversion hereof must be held indefinitely unless subsequently registered under the Act and qualified under applicable state securities laws, or unless exemption from such registration and qualification are otherwise available.

4.6 Lock-Up Agreement. In connection with the Company's IPO and upon request of the Company or the underwriters managing such offering of the Company's securities, the Holder agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company, however or whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days but subject to such extension or extensions as may be required by the underwriters in order to publish research reports while complying with the Rule 2711 of the National Association of Securities Dealers, Inc.) from the effective date of such registration statement as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's IPO; provided, that the foregoing provisions of this Article 4.6 shall not prevent or restrict Holder from transferring this Warrant or any Shares acquired upon any exercise or conversion hereof to one or more affiliates of Holder during such 180-day period (and such transferees shall be subject to the provisions hereof). The obligations described in this Article 4.6 shall apply only if all officers and Directors of the Company and all greater than 1% stockholders enter into and are bound by similar agreements (and upon request of the Holder the Company shall confirm the same in writing to the Holder).

ARTICLE 5. MISCELLANEOUS.

5.1 Term: This Warrant is exercisable in whole or in part at any time and from time to time on or before 6:00 PM Eastern time on the Expiration Date.

5.2 Legends. This Warrant and the Shares (and the securities issuable, directly or indirectly, upon conversion of the Shares, if any) shall be imprinted with a legend in substantially the following form:

> THIS WARRANT AND THE SHARES ISSUABLE HEREUNDER HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND, EXCEPT AND PURSUANT TO THE PROVISIONS OF ARTICLE 5 OF THAT CERTAIN WARRANT TO PURCHASE STOCK ISSUED BY THE COMPANY TO OXFORD FINANCE LLC DATED AS OF JANUARY , 2013, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAW OR, IN THE OPINION OF LEGAL COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS EXEMPT FROM REGISTRATION.

5.3 Compliance with Securities Laws on Transfer. This Warrant and the Shares issuable upon exercise of this Warrant (and the securities issuable, directly

or indirectly, upon conversion of the Shares, if any) may not be transferred or assigned in whole or in part without compliance with applicable federal and state securities laws by the transferor and the transferee (including, without limitation, the delivery of investment representation letters and legal opinions reasonably satisfactory to the Company, as reasonably requested by the Company). The Company shall not require Holder to provide an opinion of counsel if the transfer is to an affiliate of Holder, provided that any such transferee is an "accredited investor" as defined in Regulation D promulgated under the Act. Additionally, the Company shall also not require an opinion of counsel if there is no material question as to the availability of Rule 144 promulgated under the Act.

5.4 Transfer Procedure. After receipt by Oxford of the executed Warrant, Oxford may transfer all or part of this Warrant to one or more of Oxford's affiliates (each, an "Oxford Affiliate"), by execution of an Assignment substantially in the form of Appendix 2. Subject to the provisions of Article 5.3 and upon providing the Company with written notice, Oxford, any such Oxford Affiliate and any subsequent Holder, may transfer all or part of this Warrant or the Shares issuable upon exercise of this Warrant (or the Shares issuable directly or indirectly, upon conversion of the Shares, if any) to any other transferee, provided, however, in connection with any such transfer, the Oxford Affiliate(s) or any subsequent Holder will give the Company notice of the portion of the Warrant being transferred with the name, address and taxpayer identification number of the transferee and Holder will surrender this Warrant to the Company for reissuance to the transferee(s) (and Holder if applicable). Notwithstanding any contrary provision herein, at all times prior to the IPO, Holder may not, without the Company's prior written consent, transfer this Warrant or any portion hereof, or any Shares issued upon any exercise hereof, or any shares or other securities issued upon any conversion of any Shares issued upon any exercise hereof, to any person or entity who directly competes with the Company, except in connection with an Acquisition of the Company by such a direct competitor.

5.5 Notices. All notices and other communications from the Company to the Holder, or vice versa, shall be deemed delivered and effective when given personally or mailed by first-class registered or certified mail, postage prepaid (or on the first Business Day after transmission by facsimile), at such address as may have been furnished to the Company or Holder, as the case may be, in writing by the Company or such holder from time to time. All notices to Holder shall be addressed as follows until the Company receives notice of a change of address in connection with a transfer or otherwise:

Oxford Finance LLC
Attn: Vice President and General Counsel
133 North Fairfax Street
Alexandria, VA 22314
Attn: Legal Department
Telephone: (703) 519-4900
Facsimile: (703)519-5225
Email: LegalDepartment@oxfordfinance.com

Notice to the Company shall be addressed as follows until Holder receives notice of a change in address:

AirXpanders, Inc.
1047 Elwell Court
Palo Alto, California 94303
Telephone:
Facsimile:

5.6 Waiver. This Warrant and any term hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of such change, waiver, discharge or termination is sought.

5.7 Attorney's Fees. In the event of any dispute between the parties concerning the terms and provisions of this Warrant, the party prevailing in such dispute shall be entitled to collect from the other party all costs incurred in such dispute, including reasonable attorneys' fees.

5.8 Automatic Conversion upon Expiration. In the event that, upon the Expiration Date, the fair market value of one Share (or other security issuable upon the exercise hereof) as determined in accordance with Article 1.3 above is greater than the Warrant Price in effect on such date, then this Warrant shall automatically be deemed on and as of such date to be converted pursuant to Article 1.2 above as to all Shares (or such other securities) for which it shall not previously have been exercised or converted, and the Company shall promptly deliver a certificate representing the Shares (or such other securities) issued upon such conversion to Holder.

5.9 Counterparts; Facsimile/Electronic Signatures. This Warrant may be executed in counterparts, all of which together shall constitute one and the same agreement. Any signature page delivered electronically or by facsimile shall be binding to the same extent as an original signature page with regards to any agreement subject to the terms hereof or any amendment thereto.

5.10 Governing Law. This Warrant shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to its principles regarding conflicts of law.

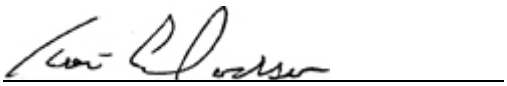
5.10 Headings. The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

5.11 Business Days. "Business Day" is any day that is not a Saturday, Sunday or a day on which Oxford Finance LLC is closed.

[*Signature page follows*]

"COMPANY"

AIRXPANDERS, INC.

By: 

Name: Scott Dodson
Title: President & CEO

"HOLDER"

OXFORD FINANCE LLC

By: _____

Name: _____
(Print)

Title:

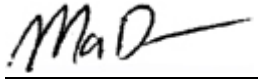
"COMPANY"

AIRXPANDERS, INC.

By: _____
Name: Scott Dodson
Title: Chief Financial Officer

"HOLDER"

OXFORD FINANCE LLC

By: 

Name: Mark Davis
(Print) Vice President - Finance, Secretary & Treasurer

Title:

APPENDIX 1

NOTICE OF EXERCISE

1. Holder elects to purchase shares of the Common/Series Preferred [strike one] Stock of pursuant to the terms of the attached Warrant, and tenders payment of the purchase price of the shares in full.

[or]

1. Holder elects to convert the attached Warrant into Shares/cash [strike one] in the manner specified in the Warrant. This conversion is exercised for of the Shares covered by the Warrant.

[Strike paragraph that does not apply.]

2. Please issue a certificate or certificates representing the Shares in the name specified below:

_____

Holders Name

_____

_____

(Address)

3. By its execution below and for the benefit of the Company, Holder hereby restates each of the representations and warranties in Article 4 of the Warrant as of the date hereof.

HOLDER:

_____

By: _____

Name: _____

Title: _____

(Date): _____

APPENDIX 2

ASSIGNMENT

For value received, Oxford Finance LLC hereby sells, assigns and transfers unto

Name: [OXFORD TRANSFEREE]

Address: _____

Tax ID:]

that certain Warrant to Purchase Stock issued by [BORROWER] (the "**Company**"), on [DATE] (the "**Warrant**") together with all rights, title and interest therein.

OXFORD FINANCE LLC

By: _____

Name: _____

Title: _____

Date: _____

By its execution below, and for the benefit of the Company, [OXFORD TRANSFEREE] makes each of the representations and warranties set forth in Article 4 of the Warrant and agrees to all other provisions of the Warrant as of the date hereof.

[OXFORD TRANSFEREE]

By: _____

Name: _____

Title: _____]

SCHEDULE 1

Company Capitalization Table

	Issued and Outstanding Shares	CSE Shares'	Total Fully Diluted Shares
COMMON STOCK (Authorized: 103,287,736)			
Issued and Outstanding	4,472,859	4,472,859	4,472,859
PREFERRED STOCK (Authorized: 85,282,764)			
SERIES A Preferred Stock (Authorized: 4,323,958)	3,908,168	3,908,168	
SERIES B Preferred Stock (Authorized: 3,375,954)	3,125,954	3,125,954	
SERIES B-1 Preferred Stock (Authorized: 9,554,375)	9,554,375	9,554,375	
SERIES C Preferred Stock (Authorized: 24,000,000)	22,245,718	22,245,718	
SERIES D Preferred Stock (Authorized: 44,028,477)	42,176,625	42,176,625	81,010,840
WARRANTS			
SERIES A Preferred Stock	415,790	415,790	
SERIES B Preferred Stock	250,000	250,000	
SERIES C Preferred Stock	480,000	480,000	1,145,790
2005 Plan (Reserved: 12,729,352)			
Shares Issuable Under Plan:			
Options and/or SPRs Issued and Outstanding	8,474,324	8,474,324	
Options and/or SPRs Committed for Issuance	0	0	
Shares Remaining for Issuance Under Plan	1,858,528	1,858,528	10,332,852
Reserved in Plan	12,729,352	12,729,352	
Options and/or SPRs Exercised	2,396,500	2,396,500	
Total shares issued and outstanding, including shares committed (or issuance and employee reserves, assuming conversion of all convertible securities and exercise of all outstanding options			***96,962,341***

Exhibit 4.5

EXECUTION VERSION

NEITHER THIS WARRANT NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. SUBJECT TO SECTION 6 BELOW, AND EXCEPT IN COMPLIANCE WITH RULE 144 UNDER SAID ACT, NO SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL FOR HOLDER, SATISFACTORY TO COMPANY, THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE ACT OR RECEIPT OF A NO-ACTION LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION.

WARRANT TO PURCHASE 262,500 SHARES OF SERIES E PREFERRED STOCK

January 16, 2014

THIS CERTIFIES THAT, for value received, GE Capital Equity Investments, Inc. ("Holder") is entitled to subscribe for and purchase up to such number of fully paid and nonassessable shares of Series E Preferred Stock of AirXpanders, Inc., a Delaware corporation ("Company"), as is equal to the Warrant Share Amount (as hereinafter defined) at the Warrant Price (as hereinafter defined), subject to the provisions and upon the terms and conditions hereinafter set forth. As used herein, the term "Preferred Stock" shall mean Company's presently authorized Series E Preferred Stock, $0.001 par value per share, and any stock into which such Series E Preferred Stock may hereafter be converted or exchanged and the term "Warrant Shares" shall mean the shares of Preferred Stock which Holder may acquire pursuant to this Warrant and any other shares of stock into which such shares of Preferred Stock may hereafter be converted or exchanged.

1. Warrant Share Amount and Warrant Price. The "Warrant Share Amount" means 262,500, which is such whole number (with any fractions rounded up) as is equal to the quotient of (a) the product of (i) the original principal amount of the Term Loan A (as defined in the Loan and Security Agreement dated as of January 16, 2014, among General Electric Capital Corporation, as Agent, the Lenders (as defined therein), and Company, as Borrower and the other entities or persons from time to time party thereto as Guarantors (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement")) made by Holder or its affiliates pursuant to the terms of the Loan Agreement, *multiplied by* (ii) one and one-half percent (1.5%), *divided by* (b) the Warrant Price. The "Warrant Price" shall be 20/100 dollars ($0.20) per share, subject to adjustment as provided in Section 7 below.

2. Conditions to Exercise. The purchase right represented by this Warrant may be exercised at any time, or from time to time, in whole or in part during the term commencing on the date hereof and ending at 5:00 P.M. (New York City time) on the tenth anniversary of the date of this Warrant, unless earlier terminated as provided in Section 3 hereof (the "Expiration Date").

3. Method of Exercise or Conversion; Payment; Issuance of Shares; Issuance of New Warrant.

(a) Cash Exercise. Subject to Section 2 hereof, the purchase right represented by this Warrant may be exercised by Holder hereof, in whole or in part, by the surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto) at the principal office of Company (as set forth in Section 18 below) and by payment to Company, by certified or bank check, or wire transfer of immediately available funds, of an amount equal to the then applicable Warrant Price per share multiplied by the number of Warrant Shares then being purchased. In the event of any exercise of the rights represented by this Warrant, certificates for the shares of stock so purchased shall be in the name of, and delivered to, Holder hereof, or as such Holder may direct (subject to the terms of transfer contained herein and upon payment by such Holder hereof of any applicable transfer taxes). Such delivery shall be made within 30 days after exercise of this Warrant and at Company's expense and, unless this Warrant has been fully exercised or expired, a new Warrant having terms and conditions substantially identical to this Warrant and representing the portion of the Warrant Shares, if any, with respect to which this Warrant shall not have been exercised, shall also be issued to Holder hereof within 30 days after exercise of this Warrant.

(b) Conversion. In lieu of exercising this Warrant as specified in Section 3(a), Holder may from time to time convert this Warrant, in whole or in part, into Warrant Shares by surrender of the original of this Warrant (together with a duly executed Notice of Exercise in substantially the form attached hereto) at the principal office of Company, in which event Company shall issue to Holder the number of Warrant Shares computed using the following formula:

$$X = \frac{Y\,(A-B)}{A}$$

Where:

X = the number of Warrant Shares to be issued to Holder.

Y = the number of Warrant Shares requested to be purchased under this Warrant (at the date of such calculation).

A = the Fair Market Value of one share of Company's Preferred Stock (at the date of such calculation).

B = Warrant Price (as adjusted to the date of such calculation).

(c) Fair Market Value. For purposes of this Section 3, Fair Market Value of one share of Company's Preferred Stock shall mean:

(i) In the event of an exercise in connection with the initial underwritten public offering of shares of common stock of the Company ("Common Stock") pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Act"), the offering price at which the underwriters initially sell Common Stock to the public multiplied by the number of shares of Common Stock into which each share of Preferred Stock is then convertible; or

(ii) The average of the closing bid and asked prices of Common Stock quoted in the Over-The-Counter Market Summary, or the last reported sale price quoted on the Nasdaq Stock Market or on any other exchange on which the Common Stock is listed, whichever is applicable, as published in the Eastern Edition of the Wall Street Journal for the three (3) trading days prior to the date of determination of Fair Market Value, multiplied by the number of shares of Common Stock into which each share of Preferred Stock is then convertible; or

(iii) In the event of an exercise in connection with a merger, acquisition or other consolidation in which Company is not the surviving entity, the value to be received per share of Preferred Stock by all holders of the Preferred Stock in such transaction as determined in the reasonable good faith judgment of Company's Board of Directors; or

(iv) In any other instance, the value as determined in the reasonable good faith judgment of Company's Board of Directors.

In the event of Section 3(c)(iii) or 3(c)(iv) above, Company's Board of Directors shall prepare a certificate, to be signed by an authorized officer of Company, setting forth in reasonable detail the basis for and method of determination of the per share Fair Market Value of the Preferred Stock. The Board of Directors will also certify to Holder that this per share Fair Market Value will be applicable to all holders of Company's Preferred Stock. Such certifications must be made to Holder, in the event of Section 3(c)(iii) above, at least ten (10) business days prior to the proposed effective date of the merger, acquisition or other consolidation, and in the event of Section 3(c)(iv), promptly after exercise of this Warrant.

(d) Automatic Exercise. To the extent this Warrant is not previously exercised, it shall be deemed to have been automatically converted in accordance with Sections 3(b) and 3(c) hereof (even if not surrendered) as of immediately before its expiration, involuntary termination or cancellation (including, without limitation, pursuant to Section 3(e)(ii)) if the then-Fair Market Value of a Warrant Share exceeds the then-Warrant Price, unless Holder notifies Company in writing to the contrary prior to such automatic exercise.

(e) Treatment of Warrant Upon Acquisition of Company.

(i) Certain Definitions. For the purpose of this Warrant: "Acquisition" means any sale, license, assignment, or other disposition of all or substantially all of the assets of Company, or any reorganization, consolidation, or merger of Company, or sale of outstanding Company securities by holders thereof, where the holders of Company's securities as of immediately before the transaction beneficially own less than a majority of the outstanding voting securities of the successor or surviving entity as of immediately after the transaction. For the purpose of this Warrant: "Marketable Securities" means securities meeting all of the following requirements: (i) the issuer of the securities is then subject to the reporting requirements of Section 13 or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and is then current in required filings under the Act and the Exchange Act; (ii) the securities are then traded on the New York Stock Exchange or Nasdaq Global Select Market; and (iii) Holder will not be restricted by law or contract from immediately reselling all of such securities that are received by Holder in such Acquisition through the stock exchange on which such securities are traded. For purposes of this Section 3(e), "Affiliate" shall mean any person or entity that controls or is controlled by or is under common control with the Company, and each of such person's or entity's officers, directors, and affiliates, as applicable. Company shall provide Holder with written notice of any proposed Acquisition not later than ten (10) business days prior to the closing thereof setting forth the material terms and conditions thereof, and shall provide Holder with copies of the transaction agreements and other documents in connection therewith and with such other information respecting such proposed Acquisition as may reasonably be requested by Holder.

(ii) Acquisition for Cash or Marketable Securities. Holder agrees that, in the event of an Acquisition in which the sole consideration is cash or Marketable Securities, this Warrant shall be automatically exercised (or terminate) as provided in Section 3(d) on and as of the closing of such Acquisition to the extent not previously exercised.

(iii) Asset Sale. In the event of an Acquisition that is an arms length sale of all or substantially all of Company's assets (and only its assets) to a third party that is not an Affiliate of Company (a "True Asset Sale"), Holder may either (a) exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Acquisition, or (b) permit the Warrant to continue until the Expiration Date if Company continues as a going concern following the closing of any such True Asset Sale.

(iv) Assumption of Warrant. Upon the closing of any Acquisition other than as particularly described in Section 3(e)(ii) or 3 (e)(iii) above, Company shall, unless Holder requests otherwise, cause the surviving or successor entity to assume this Warrant and the obligations of Company hereunder, and this Warrant shall, from and after such closing, be exercisable for the same class, number and kind of securities, cash and other property as would have been paid for or in respect of the shares issuable (as of immediately prior to such closing) upon exercise in full hereof as if such shares had been issued and outstanding on and as of such closing, at an aggregate Warrant Price equal to the aggregate Warrant Price in effect as of immediately prior to such closing; and subject to further adjustment thereafter from time to time in accordance with the provisions of this Warrant.

4. Representations and Warranties of Holder and Company.

(a) Representations and Warranties by Holder. Holder represents and warrants to Company as of the date hereof with respect to this Warrant as follows:

(i) Evaluation. Holder has substantial experience in evaluating and investing in private placement transactions of securities of companies similar to Company so that Holder is capable of evaluating the merits and risks of its investment in Company and has the capacity to protect its interests.

(ii) Resale. Except for transfers to an affiliate of Holder, Holder is acquiring this Warrant and the Warrant Shares issuable upon exercise of this Warrant (collectively the "Securities") for investment for its own account and not with a view to, or for resale in connection with, any distribution thereof. Holder understands that the Securities have not been registered under Act by reason of a specific exemption from the registration provisions of the Act which depends upon, among other things, the bona fide nature of the investment intent as expressed herein.

(iii) Rule 144. Holder acknowledges that the Securities must be held indefinitely unless subsequently registered under the Act or an exemption from such registration is available. Holder is aware of the provisions of Rule 144 promulgated under the Act.

(iv) Accredited Investor. Holder is an "accredited investor" within the meaning of Regulation D promulgated under the Act.

(v) Opportunity To Discuss. Holder has had an opportunity to discuss Company's business, management and financial affairs with its management and an opportunity to review Company's facilities. Holder understands that such discussions, as well as the written information issued by Company, were intended to describe the aspects of Company's business and prospects which Company believes to be material but were not necessarily a thorough or exhaustive description.

(b) Representations and Warranties by Company. Company hereby represents and warrants to Holder that the statements in the following paragraphs of this Section 4(b) are true and correct as of the date hereof.

(i) Corporate Organization and Authority. Company (a) is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, (b) has the corporate power and authority to own and operate its properties and to carry on its business as now conducted and as proposed to be conducted; and (c) is qualified as a foreign corporation in all jurisdictions where such qualification is required.

(ii) Corporate Power. Company has all requisite legal and corporate power and authority to execute, issue and deliver this Warrant, to issue the Warrant Shares issuable upon exercise or conversion of this Warrant, and to carry out and perform its obligations under this Warrant and any related agreements.

(iii) Authorization; Enforceability. All corporate action on the part of Company, its officers, directors and shareholders necessary for the authorization, execution, delivery and performance of its obligations under this Warrant and for the authorization, issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise of this Warrant was taken prior to the issuance of this Warrant and this Warrant constitutes the legally binding and valid obligation of Company enforceable in accordance with its terms.

(iv) Valid Issuance of Warrant and Warrant Shares. This Warrant has been validly issued and is free of restrictions on transfer other than restrictions on transfer set forth herein and under applicable state and federal securities laws. The Warrant Shares issuable upon exercise or conversion of this Warrant, when issued, sold and delivered in accordance with the terms of this Warrant for the consideration expressed herein, will be duly and validly issued, fully paid and nonassessable, and will be free of restrictions on transfer other than restrictions on transfer under this Warrant and under applicable state and federal securities laws. Subject to applicable restrictions on transfer, the issuance and delivery of this Warrant and the Warrant Shares issuable upon exercise or conversion of this Warrant are not subject to any preemptive or other similar rights which would interfere with the performance by the Company of its obligations under this Warrant or any liens or encumbrances except as specifically set forth in Company's Certificate of Incorporation ("Certificate of Incorporation") or this Warrant. The offer, sale and issuance of the Warrant Shares, as contemplated by this Warrant, are exempt from the prospectus and registration requirements of applicable United States federal and state security laws, and neither Company nor any authorized agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

(v) No Conflict. The execution, delivery, and performance of this Warrant will not result in (a) any violation of, be in conflict with, or constitute a default under, with or without the passage of time or the giving of notice (1) any provision of Company's Certificate of Incorporation or by-laws; (2) any provision of any judgment, decree, or order to which Company is a party, by which it is bound, or to which any of its material assets are subject; (3) any contract, obligation, or commitment to which Company is a party or by which it is bound; or (4) any statute, rule, or governmental regulation applicable to Company, or (b) the creation of any lien, charge or encumbrance upon any assets of Company.

(vi) Capitalization. The capitalization table of Company attached hereto as Annex A is complete and accurate as of the date hereof (after giving effect to the issuance of this Warrant) and reflects (a) all outstanding capital stock of Company and (b) all outstanding warrants, options, conversion privileges, preemptive rights or other rights or agreements to purchase or otherwise acquire or issue any equity securities or convertible securities of Company. Company has reserved a sufficient number of shares of Common Stock to allow the full conversion of all currently outstanding shares of Preferred Stock.

(vii) Warrant Price. The Warrant Price is no greater than the lowest price at which Company has issued Series E Preferred Stock to an unrelated third party in an arm's length transaction.

5. Legends.

(a) Legend. Each certificate representing the Warrant Shares shall be endorsed with substantially the following legend:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED (UNLESS SUCH TRANSFER IS TO AN AFFILIATE OF HOLDER) UNLESS COVERED BY AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT, A "NO ACTION" LETTER FROM THE SECURITIES AND EXCHANGE COMMISSION WITH RESPECT TO SUCH TRANSFER, A TRANSFER MEETING THE REQUIREMENTS OF RULE 144 OF THE SECURITIES ACT OF 1933, OR (IF REASONABLY REQUIRED BY COMPANY) AN OPINION OF COUNSEL SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY SUCH TRANSFER IS EXEMPT FROM SUCH REGISTRATION.

Company need not enter into its stock records a transfer of Warrant Shares unless the conditions specified in the foregoing legend are satisfied. Company may also instruct its transfer agent not to allow the transfer of any of the Warrant Shares unless the conditions specified in the foregoing legend are satisfied.

(b) Removal of Legend and Transfer Restrictions. The legend relating to the Act endorsed on a certificate pursuant to paragraph 5 (a) of this Warrant shall be removed and Company shall issue a certificate without such legend to Holder if (i) the Securities are registered under the Act and a prospectus meeting the requirements of Section 10 of the Act is available or (ii) Holder provides to Company an opinion of counsel for Holder reasonably satisfactory to Company, a no-action letter or interpretive opinion of the staff of the Securities and Exchange Commission ("SEC") reasonably satisfactory to Company, or other evidence reasonably satisfactory to Company, to the effect that public sale, transfer or assignment of the Securities may be made without registration and without compliance with any restriction such as Rule 144.

6. Transfers of Warrant. In connection with any transfer by Holder of this Warrant, Company may require the transferee to provide Company with written representations and warranties that transferee is acquiring this Warrant and the shares of Preferred Stock to be issued upon exercise for investment purposes only and not with a view to any sale or distribution, and may require a legal opinion, in form and substance satisfactory to Company and its counsel, stating that such transfer is exempt from the registration and prospectus delivery requirements of the Act; provided, that Company shall not require an opinion of counsel if the transfer is to an affiliate of Holder. Following any transfer of this Warrant, at the request of either Company or the transferee, the transferee shall surrender this Warrant to Company in exchange for a new warrant of like tenor and date, executed by Company. Upon any partial transfer, Company will also execute and deliver to Holder a new warrant of like tenor with respect to the portion of this Warrant not so transferred. Subject to the foregoing, this Warrant is transferable on the books of Company at its principal office by the registered Holder hereof upon surrender of this Warrant properly endorsed. Holder shall not have any right to transfer any portion of this Warrant to any direct competitor of Company.

7. Adjustment for Certain Events. The number and kind of securities purchasable upon the exercise of this Warrant and the Warrant Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification or Merger. In case of (i) any reclassification or change of securities of the class issuable upon exercise of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination), (ii) any merger of Company with or into another corporation (other than a merger with another corporation in which Company is the acquiring and the surviving corporation and which does not result in any reclassification or change of outstanding securities issuable upon exercise of this Warrant), or (iii) any sale of all or substantially all of the assets of Company, Company, or such successor or purchasing corporation, as the case may be, shall duly execute and deliver to Holder a new Warrant (in form and substance satisfactory to Holder of this Warrant), or Company shall make appropriate provision without the issuance of a new Warrant, so that Holder shall have the right to receive, at a total purchase price not to exceed that payable upon the exercise of the unexercised portion of this Warrant, and in lieu of the Warrant Shares theretofore issuable upon exercise or conversion of this Warrant, the kind and amount of shares of stock, other securities, money and property receivable upon such reclassification, change, merger or sale by a holder of the number of shares of Preferred Stock then purchasable under this Warrant, or in the case of such a merger or sale in which the consideration paid consists all or in part of assets other than securities of the successor or purchasing corporation, at the option of Holder, the securities of the successor or purchasing corporation having a value at the time of the transaction equivalent to the value of the Warrant Shares purchasable upon exercise of this Warrant at the time of the transaction. Any new Warrant shall provide for adjustments that shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 7. The provisions of this subparagraph (a) shall similarly apply to successive reclassifications, changes, mergers and transfers.

(b) Subdivision or Combination of Shares. If Company at any time while this Warrant remains outstanding and unexpired shall subdivide or combine its outstanding shares of Preferred Stock, the Warrant Price shall be proportionately decreased and the number of Warrant Shares issuable hereunder shall be proportionately increased in the case of a subdivision and the Warrant Price shall be proportionately increased and the number of Warrant Shares issuable hereunder shall be proportionately decreased in the case of a combination.

(c) Stock Dividends and Other Distributions. If Company at any time while this Warrant is outstanding and unexpired shall (i) pay a dividend with respect to Preferred Stock payable in Preferred Stock, then the Warrant Price shall be adjusted, from and after the date of determination of shareholders entitled to receive such dividend or distribution, to that price determined by multiplying the Warrant Price in effect immediately prior to such date of determination by a fraction (A) the numerator of which shall be the total number of shares of Preferred Stock outstanding immediately prior to such dividend or distribution, and (B) the denominator of which shall be the total number of shares of Preferred Stock outstanding immediately after such dividend or distribution; or (ii) make any other distribution with respect to Preferred Stock (except any distribution specifically provided for in Sections 7(a) and 7(b)), then, in each such case, provision shall be made by Company such that Holder shall receive upon exercise of this Warrant a proportionate share of any such dividend or distribution as though it were Holder of the Warrant Shares as of the record date fixed for the determination of the shareholders of Company entitled to receive such dividend or distribution.

(d) Adjustment of Number of Shares. Upon each adjustment in the Warrant Price, the number of Warrant Shares purchasable hereunder shall be adjusted, to the nearest whole share, to the product obtained by multiplying the number of

Warrant Shares purchasable immediately prior to such adjustment in the Warrant Price by a fraction, the numerator of which shall be the Warrant Price immediately prior to such adjustment and the denominator of which shall be the Warrant Price immediately thereafter.

(e) Adjustment for Dilutive Issuance. The Warrant Price and the number of Warrant Shares issuable upon exercise of this Warrant or, if the Warrant Shares are Preferred Stock, the number of shares of Common Stock issuable upon conversion of the Warrant Shares, shall be subject to adjustment, from time to time in the manner set forth in Company's Certificate of Incorporation as if the Warrant Shares were issued and outstanding on and as of the date of any such required adjustment. The provisions set forth for the Warrant Shares in Company's Certificate of Incorporation relating to the above in effect as of the date hereof may not be amended, modified or waived, without the prior written consent of Holder unless such amendment, modification or waiver affects the rights associated with the Warrant Shares in the same manner as such amendment, modification or waiver affects the rights associated with all other shares of the same series and class as the Warrant Shares.

(f) Adjustment for Pay-to-Play Transaction. In the event that the Company's Certificate of Incorporation provides, or is amended to so provide, for the amendment or modification of the rights, preferences or privileges of the Preferred Stock, or the reclassification, conversion or exchange of the Preferred Stock, on account of the failure of a holder of the Preferred Stock to participate in an equity financing transaction (a "Pay-to-Play Provision"), such Pay-to-Play Provision shall not apply to the Holder and this Warrant shall remain exercisable for the same number and type of shares of equity securities for which it was exercisable immediately prior to such equity financing transaction.

8. Notice of Adjustments. Whenever any Warrant Price or the kind or number of securities issuable under this Warrant shall be adjusted pursuant to Section 7 hereof, Company shall prepare a certificate signed by an officer of Company setting forth, in reasonable detail, the event requiring the adjustment, the amount of the adjustment, the method by which such adjustment was calculated, and the Warrant Price and number or kind of shares issuable upon exercise of this Warrant after giving effect to such adjustment, and within thirty (30) days of such adjustment shall cause copies of such certificate to be delivered to Holder in accordance with Section 18 hereof.

9. Financial and Other Reports.

(a) Financial Statements. From time to time up to the earlier of the Expiration Date or the complete exercise of this Warrant, Company shall furnish to Holder, (i) as soon as available and in any event within 30 days after the end of each fiscal month, unaudited consolidated (and if available, consolidating) balance sheets, statements of income or operations and cash flow statements of Company and its Subsidiaries as of the end of such fiscal month and that portion of the fiscal year ending as of the close of such fiscal month, in a form acceptable to Holder and certified by Company's president, chief executive officer or chief financial officer, and (ii) as soon as available and in any event within one hundred and eighty (180) days after the end of each fiscal year, audited consolidated (and if available, consolidating) balance sheets, statements of income or operations and cash flow statements of Company and its Subsidiaries as of the end of such fiscal year, together with a report of an independent certified public accounting firm reasonably acceptable to Holder, which report shall contain an unqualified opinion stating that such audited financial statements fairly present in all material respects the financial position of Company and its Subsidiaries for the periods indicated therein in conformity with GAAP applied on a basis consistent with prior years without qualification as to the scope of the audit or as to going concern and without any similar qualification. All such financial statements are to be prepared using GAAP (subject, in the case of unaudited financial statements, to the absence of footnotes and normal year end audit adjustments).

(b) Capitalization Table. Within 30 days of the end of each calendar quarter, if the Company is a private company, Company shall also deliver to Holder an updated capitalization table of Company in the form attached hereto as Annex A.

10. Registration Rights. Upon request of Holder, Company shall use commercially reasonable efforts to grant to Holder piggyback registration rights for the Warrant Shares to the extent that such registration rights have been granted to holders of the Preferred Stock, subject to any reasonable and customary requests of the Company. Such registration rights shall be on terms no less favorable to Holder than the piggyback registration rights granted to holders of the Preferred Stock.

11. No Fractional Shares. No fractional share of Preferred Stock will be issued in connection with any exercise or conversion hereunder, but in lieu of such fractional share Company shall make a cash payment therefor upon the basis of the Warrant Price then in effect.

12. Charges, Taxes and Expenses. Issuance of certificates for shares of Preferred Stock upon the exercise or conversion of this Warrant shall be made without charge to Holder for any United States or state of the United States documentary stamp tax or other incidental expense with respect to the issuance of such certificate, all of which taxes and expenses shall be paid by Company, and such certificates shall be issued in the name of Holder.

13. No Shareholder Rights Until Exercise. Except as expressly provided herein, this Warrant does not entitle Holder to any voting rights or other rights as a shareholder of Company prior to the exercise hereof.

14. Registry of Warrant. Company shall maintain a registry showing the name and address of the registered Holder of this Warrant. This Warrant may be surrendered for exchange or exercise, in accordance with its terms, at such office or agency of Company, and Company and Holder shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

15. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and, in the case of loss, theft, or destruction, of indemnity reasonably satisfactory to it, and, if mutilated, upon surrender and cancellation of this Warrant, Company will execute and deliver a new Warrant, having terms and conditions substantially identical to this Warrant, in lieu hereof.

16. Miscellaneous.

(a) Issue Date. The provisions of this Warrant shall be construed and shall be given effect in all respect as if it had been issued and delivered by Company on the date hereof.

(b) Successors. This Warrant shall be binding upon any successors or assigns of Company.

(c) Headings. The headings used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

(d) Saturdays, Sundays, Holidays. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall be a Saturday or a Sunday or shall be a legal holiday in the State of New York, then such action may be taken or such right may be exercised on the next succeeding day not a Saturday, Sunday or a legal holiday.

17. No Impairment. Company will not, by amendment of its Certificate of Incorporation or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of Holder hereof against impairment. Without limiting the breadth of the foregoing, Company will not cause the Preferred Stock to be converted into Common Stock unless such conversion is effected as part of the conversion of all Company's outstanding series of preferred stock and other senior securities into Common Stock.

18. Addresses. All notices or other communications given in connection with this Warrant shall be in writing, shall be addressed to the parties at their respective addresses set forth below (unless and until a different address may be specified in a written notice to the other party delivered in accordance with this Section 18), and shall be deemed given (a) on the date of receipt if delivered by hand, (b) on the next business day after being sent by a nationally-recognized overnight courier, or (c) on the fourth business day after being sent by registered or certified mail, return receipt requested and postage prepaid.

If to Company:
AirXpanders, Inc.
1047 Elwell Court
Palo Alto, CA 94303
Attn: John Lai

If to Holder:
GE Capital Equity Investments, Inc.
c/o GE Healthcare Financial Services, Inc.
Two Bethesda Metro Center, Suite 600
Bethesda, Maryland 20814
Attn: Senior Vice President of Risk – Life Science Finance

With copies to:
GE Healthcare Financial Services, Inc.
Two Bethesda Metro Center, Suite 600
Bethesda, Maryland 20814
Attn: General Counsel

and

GE Equity
201 Merritt 7
Norwalk, Connecticut 06851
Attn: Team Leader –HFS/AirXpanders

19. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS WARRANT OR THE WARRANT SHARES.

20. GOVERNING LAW. THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES OF SUCH STATE).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Company has caused this Warrant to be executed by its officer thereunto duly authorized.

AIRXPANDERS, INC.

By: 

Name: Scott Dodson

Title: President & CEO

Signature page to Warrant

NOTICE OF EXERCISE

To:

AirXpanders, Inc.
1047 Elwell Court
Palo Alto, CA 94303
Attn: John Lai

1. The undersigned Warrantholder ("Holder") elects to acquire shares of the Series Preferred Stock (the "Preferred Stock") of AirXpanders, Inc. (the "Company"), pursuant to the terms of the Stock Purchase Warrant dated , 20 (the "Warrant").

2. Holder exercises its rights under the Warrant as set forth below:

( ) Holder elects to purchase shares of Preferred Stock as provided in Section 3(a) and tenders herewith a check in the amount of $ as payment of the purchase price.

( ) Holder elects to convert the purchase rights into shares of Preferred Stock as provided in Section 3(b) of the Warrant.

3. Holder surrenders the Warrant with this Notice of Exercise.

Holder represents that it is acquiring the aforesaid shares of Preferred Stock for investment and not with a view to or for resale in connection with distribution and it has no present intention of distributing or reselling the shares.

Please issue a certificate representing the shares of the Preferred Stock in the name of Holder or in such other name as is specified below:

Name: _____

Address: _____

Taxpayer I.D.: _____

[NAME OF HOLDER]

By: _____
Name: _____
Title: Duly Authorized Signatory

Date: , 20

ANNEX A

CAPITALIZATION TABLE

Exhibit 10.1

AIRXPANDERS, INC.

2005 EQUITY INCENTIVE PLAN
(as amended through January 11, 2012)

1. Purposes of the Plan. The purposes of the AirXpanders, Inc. 2005 Equity Incentive Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees, Directors and Consultants and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Non-Qualified Stock Options, as determined by the Administrator at the time of grant. Stock Purchase Rights may also be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Acquisition" means (1) a dissolution, liquidation or sale of all or substantially all of the assets of the Company; (2) a merger or consolidation in which the Company is not the surviving corporation or (3) a reverse merger in which the Company is the surviving corporation but the shares of the Company's common stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of securities, cash or otherwise.

(b) "Administrator" means the Board or the Committee responsible for conducting the general administration of the Plan, as applicable, in accordance with Section 4 hereof.

(c) "Applicable Laws" means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Options or Stock Purchase Rights are granted under the Plan.

(d) "Board" means the Board of Directors of the Company.

(e) "Code" means the Internal Revenue Code of 1986, as amended, or any successor statute or statutes thereto. Reference to any particular Code section shall include any successor section.

(f) "Committee" means a committee appointed by the Board in accordance with Section 4 hereof.

(g) "Common Stock" means the common stock of the Company, par value $0.001 per share.

(h) "Company" means AirXpanders, Inc., a Delaware corporation.

(i) "Consultant" means any consultant or adviser if: (i) the consultant or adviser renders *bona fide* services to the Company or any Parent or Subsidiary of the Company;

(ii) the services rendered by the consultant or adviser are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company's securities and (iii) the consultant or adviser is a natural person who has contracted directly with the Company or any Parent or Subsidiary of the Company to render such services.

(j) "Director" means a member of the Board.

(k) "Employee" means any person, including an Officer or Director, who is an employee (as defined in accordance with Section 3401(c) of the Code) of the Company or any Parent or Subsidiary of the Company. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. For purposes of Incentive Stock Options, no such leave may exceed ninety (90) days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient, by itself, to constitute "employment" by the Company.

(l) "Exchange Act" means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto. Reference to any particular Exchange Act section shall include any successor section.

(m) "Fair Market Value" means, as of any date, the value of a share of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including, without limitation, The Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for a share of such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for the last market trading day prior to the time of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean between the high bid and low asked prices for a share of the Common Stock on the last market trading day prior to the day of determination; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Administrator.

(n) "Holder" means a person who has been granted or awarded an Option or Stock Purchase Right or who holds Shares acquired pursuant to the exercise of an Option or Stock Purchase Right.

(o) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and which is designated as an Incentive Stock Option by the Administrator.

(p) "Independent Director" means a Director who is not an Employee of the Company.

(q) "Non-Qualified Stock Option" means an Option (or portion thereof) that is not designated as an Incentive Stock Option by the Administrator, or which is designated as an Incentive Stock Option by the Administrator but fails to qualify as an incentive stock option within the meaning of Section 422 of the Code.

(r) "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(s) "Option" means a stock option granted pursuant to the Plan.

(t) "Option Agreement" means a written agreement between the Company and a Holder evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(u) "Parent" means any corporation, whether now or hereafter existing (other than the Company), in an unbroken chain of corporations ending with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(v) "Plan" means the Expanders, Inc. 2005 Equity Incentive Plan.

(w) "Public Trading Date" means the first date upon which Common Stock of the Company is listed (or approved for listing) upon notice of issuance on any securities exchange or designated (or approved for designation) upon notice of issuance as a national market security on an interdealer quotation system.

(x) "Restricted Stock" means Shares acquired pursuant to the exercise of an unvested Option in accordance with Section 10 (h) below or pursuant to a Stock Purchase Right granted under Section 12 below.

(y) "Rule 16b-3" means that certain Rule 16b-3 under the Exchange Act, as such Rule may be amended from time to time.

(z) "Section 16(b)" means Section 16(b) of the Exchange Act, as such Section may be amended from time to time.

(aa) "Securities Act" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto. Reference to any particular Securities Act section shall include any successor section.

(bb) "Service Provider" means an Employee, Director or Consultant.

(cc) "Share" means a share of Common Stock, as adjusted in accordance with Section 13 below.

(dd) "Stock Purchase Right" means a right to purchase Common Stock pursuant to Section 12 below.

(ee) "Subsidiary" means any corporation, whether now or hereafter existing (other than the Company), in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock in one of the other corporations in such chain.

3. Stock Subject to the Plan. Subject to the provisions of Section 13 of the Plan, the shares of stock subject to Options or Stock Purchase Rights shall be Common Stock. Subject to the provisions of Section 13 of the Plan, the maximum aggregate number of Shares which may be issued upon exercise of such Options or Stock Purchase Rights is 12,729,352 Shares. Shares issued upon exercise of Options or Stock Purchase Rights may be authorized but unissued, or reacquired Common Stock. If an Option or Stock Purchase Right expires or becomes unexercisable without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated). Shares which are delivered by the Holder or withheld by the Company upon the exercise of an Option or Stock Purchase Right under the Plan, in payment of the exercise price thereof or tax withholding thereon, may again be optioned, granted or awarded hereunder, subject to the limitations of this Section 3. If Shares of Restricted Stock are repurchased by the Company at their original purchase price, such Shares shall become available for future grant under the Plan (unless the Plan has terminated). Notwithstanding the provisions of this Section 3, no Shares may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an Incentive Stock Option under Code Section 422.

4. Administration of the Plan.

(a) Administrator. Unless and until the Board delegates administration to a Committee as set forth below, the Plan shall be administered by the Board. The Board may delegate administration of the Plan to a Committee or Committees of one or more members of the Board, and the term "Committee" shall apply to any person or persons to whom such authority has been delegated. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Notwithstanding the foregoing, however, from and after the Public Trading Date, a Committee of the Board shall administer the Plan and the Committee shall consist solely of two or more Independent Directors each of whom is an "outside director," within the meaning of Section 162(m) of the Code, a "non-employee director," within the meaning of Rule 16b-3, and qualifies as "independent" within the meaning of any applicable stock exchange listing requirements. Members of the Committee shall also satisfy any other legal requirements applicable to membership on the

Committee, including requirements under the Sarbanes-Oxley Act of 2002 and other Applicable Laws. Within the scope of such authority, the Board or the Committee may (i) delegate to a committee of one or more members of the Board who are not Independent Directors the authority to grant awards under the Plan to eligible persons who are either (1) not then "covered employees," within the meaning of Section 162(m) of the Code and are not expected to be "covered employees" at the time of recognition of income resulting from such award or (2) not persons with respect to whom the Company wishes to comply with Section 162(m) of the Code and/or (ii) delegate to a committee of one or more members of the Board who are not "non-employee directors," within the meaning of Rule 16b-3, the authority to grant awards under the Plan to eligible persons who are not then subject to Section 16 of the Exchange Act. The Board may abolish the Committee at any time and revest in the Board the administration of the Plan. Appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written notice to the Board. Vacancies in the Committee may only be filled by the Board.

(b) Powers of the Administrator. Subject to the provisions of the Plan and the specific duties delegated by the Board to such Committee, and subject to the approval of any relevant authorities, the Administrator shall have the authority in its sole discretion:

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Options and Stock Purchase Rights may from time to time be granted hereunder;

(iii) to determine the number of Shares to be covered by each such award granted hereunder;

(iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions of any Option or Stock Purchase Right granted hereunder (such terms and conditions include, but are not limited to, the exercise price, the time or times when Options or Stock Purchase Rights may vest or be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or Stock Purchase Right or the Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine);

(vi) to determine whether to offer to buyout a previously granted Option as provided in subsection 10(i) and to determine the terms and conditions of such offer and buyout (including whether payment is to be made in cash or Shares);

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(viii) to allow Holders to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option or Stock Purchase Right that number of Shares having a Fair Market Value equal to the minimum amount

required to be withheld based on the statutory withholding rates for federal and state tax purposes that apply to supplemental taxable income. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by Holders to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

(ix) to amend the Plan or any Option or Stock Purchase Right granted under the Plan as provided in Section 15; and

(x) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan and to exercise such powers and perform such acts as the Administrator deems necessary or desirable to promote the best interests of the Company which are not in conflict with the provisions of the Plan.

(c) Effect of Administrator's Decision. All decisions, determinations and interpretations of the Administrator shall be final and binding on all Holders.

5. Eligibility. Non-Qualified Stock Options and Stock Purchase Rights may be granted to Service Providers. Incentive Stock Options may be granted only to Employees. If otherwise eligible, a Service Provider who has been granted an Option or Stock Purchase Right may be granted additional Options or Stock Purchase Rights.

6. Limitations.

(a) Each Option shall be designated by the Administrator in the Option Agreement as either an Incentive Stock Option or a Non-Qualified Stock Option. However, notwithstanding such designations, to the extent that the aggregate Fair Market Value of Shares subject to a Holder's Incentive Stock Options and other incentive stock options granted by the Company, any Parent or Subsidiary, which become exercisable for the first time during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options or other options shall be treated as Non-Qualified Stock Options.

For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the time of grant.

(b) Neither the Plan, any Option nor any Stock Purchase Right shall confer upon a Holder any right with respect to continuing the Holder's employment or consulting relationship with the Company, nor shall they interfere in any way with the Holder's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause.

(c) No Service Provider shall be granted, in any calendar year, Options or Stock Purchase Rights to purchase more than **1,278,667** Shares; *provided, however*, that the foregoing limitation shall not apply prior to the Public Trading Date and, following the Public Trading Date, the foregoing limitation shall not apply until the earliest of: (i) the first material modification of the Plan (including any increase in the number of shares reserved for issuance under the Plan in accordance with Section 3); (ii) the issuance of all of the shares of Common

Stock reserved for issuance under the Plan; (iii) the expiration of the Plan; (iv) the first meeting of stockholders at which Directors of the Company are to be elected that occurs after the close of the third (3rd) calendar year following the calendar year in which occurred the first registration of an equity security of the Company under Section 12 of the Exchange Act or (v) such other date required by Section 162(m) of the Code and the rules and regulations promulgated thereunder. The foregoing limitation shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 13. For purposes of this Section 6(c), if an Option is canceled in the same calendar year it was granted (other than in connection with a transaction described in Section 13), the canceled Option will be counted against the limit set forth in this Section 6(c). For this purpose, if the exercise price of an Option is reduced, the transaction shall be treated as a cancellation of the Option and the grant of a new Option.

7. Term of Plan. The Plan shall become effective upon its initial adoption by the Board and shall continue in effect until it is terminated under Section 15 of the Plan. No Options or Stock Purchase Rights may be issued under the Plan after the tenth (10th) anniversary of the earlier of (i) the date upon which the Plan is adopted by the Board or (ii) the date the Plan is approved by the stockholders.

8. Term of Option. The term of each Option shall be stated in the Option Agreement; *provided, however*, that the term shall be no more than ten (10) years from the date of grant thereof. In the case of an Incentive Stock Option granted to a Holder who, at the time the Option is granted, owns (or is treated as owning under Code Section 424) stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

9. Option Exercise Price and Consideration.

(a) Except as provided in Section 13, the per share exercise price for the Shares to be issued upon exercise of an Option shall be such price as is determined by the Administrator, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time of grant of such Option, owns (or is treated as owning under Code Section 424) stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of grant.

(B) granted to any other Employee, the per Share exercise price shall be no less than one hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Non-Qualified Stock Option

(A) granted to a Service Provider who, at the time of grant of such Option, owns (or is treated as owning under Code Section 424) stock representing more

than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the exercise price shall be no less than one hundred ten percent (110%) of the Fair Market Value per Share on the date of the grant.

(B) granted to any other Service Provider, the per Share exercise price shall be no less than one-hundred percent (100%) of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction.

(b) The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant). Such consideration may consist of (1) cash, (2) check, (3) with the consent of the Administrator, a full recourse promissory note bearing interest (at no less than such rate as is a market rate of interest and which then precludes the imputation of interest under the Code), payable upon such terms as may be prescribed by the Administrator, and structured to comply with Applicable Laws, (4) with the consent of the Administrator, other Shares which (x) in the case of Shares acquired from the Company, have been owned by the Holder for more than six (6) months on the date of surrender, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which such Option shall be exercised, (5) with the consent of the Administrator, surrendered Shares then issuable upon exercise of the Option having a Fair Market Value on the date of exercise equal to the aggregate exercise price of the Option or exercised portion thereof, (6) with the consent of the Administrator, property of any kind which constitutes good and valuable consideration, (7) with the consent of the Administrator, delivery of a notice that the Holder has placed a market sell order with a broker with respect to Shares then issuable upon exercise of the Options and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Option exercise price, *provided*, that payment of such proceeds is then made to the Company upon settlement of such sale, or (8) with the consent of the Administrator, any combination of the foregoing methods of payment.

10. Exercise of Option.

(a) Vesting; Fractional Exercises. Except as provided in Section 13, Options granted hereunder shall be vested and exercisable according to the terms hereof at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement; *provided, however*, that, except with regard to Options granted to Officers, Directors or Consultants, in no event shall an Option granted hereunder become vested and exercisable at a rate of less than twenty percent (20%) per year over five (5) years from the date the Option is granted, subject to reasonable conditions, such as continuing to be a Service Provider. An Option may not be exercised for a fraction of a Share.

(b) Deliveries upon Exercise. All or a portion of an exercisable Option shall be deemed exercised upon delivery of all of the following to the Secretary of the Company or his or her office:

(i) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Option, or a portion thereof, is exercised. The notice shall be signed by the Holder or other person then entitled to exercise the Option or such portion of the Option;

(ii) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with Applicable Laws. The Administrator may, in its sole discretion, also take whatever additional actions it deems appropriate to effect such compliance, including, without limitation, placing legends on share certificates and issuing stop transfer notices to agents and registrars;

(iii) Upon the exercise of all or a portion of an unvested Option pursuant to Section 10(h), a Restricted Stock purchase agreement in a form determined by the Administrator and signed by the Holder or other person then entitled to exercise the Option or such portion of the Option; and

(iv) In the event that the Option shall be exercised pursuant to Section 10(f) by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Option.

(c) Conditions to Delivery of Share Certificates. The Company shall not be required to issue or deliver any certificate or certificates for Shares purchased upon the exercise of any Option or portion thereof prior to fulfillment of all of the following conditions:

(i) The admission of such Shares to listing on all stock exchanges on which such class of stock is then listed;

(ii) The completion of any registration or other qualification of such Shares under any state or federal law, or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body which the Administrator shall, in its sole discretion, deem necessary or advisable;

(iii) The obtaining of any approval or other clearance from any state or federal governmental agency which the Administrator shall, in its sole discretion, determine to be necessary or advisable;

(iv) The lapse of such reasonable period of time following the exercise of the Option as the Administrator may establish from time to time for reasons of administrative convenience; and

(v) The receipt by the Company of full payment for such Shares, including payment of any applicable withholding tax, which in the sole discretion of the Administrator may be in the form of consideration used by the Holder to pay for such Shares under Section 9(b).

(d) Termination of Relationship as a Service Provider. If a Holder ceases to be a Service Provider other than by reason of the Holder's disability or death, such Holder may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of termination; *provided*, *however*, that prior to the Public Trading Date, such period of time shall not be less than thirty (30) days (but in no event later than the expiration of the term of the Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for three (3) months following the Holder's termination. If, on the date of termination, the Holder is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option immediately cease to be issuable under the Option and shall again become available for issuance under the Plan. If, after termination, the Holder does not exercise his or her Option within the time period specified herein, the Option shall terminate, and the Shares covered by such Option shall again become available for issuance under the Plan.

(e) Disability of Holder. If a Holder ceases to be a Service Provider as a result of the Holder's disability, the Holder may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent the Option is vested on the date of termination; *provided, however*, that prior to the Public Trading Date, such period of time shall not be less than six (6) months (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Holder's termination. If such disability is not a "disability" as such term is defined in Section 22(e)(3) of the Code, in the case of an Incentive Stock Option such Incentive Stock Option shall automatically cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Non-Qualified Stock Option from and after the day which is three (3) months and one (1) day following such termination. If, on the date of termination, the Holder is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately cease to be issuable under the Option and shall again become available for issuance under the Plan. If, after termination, the Holder does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall again become available for issuance under the Plan.

(f) Death of Holder. If a Holder dies while a Service Provider, the Option may be exercised within such period of time as is specified in the Option Agreement *provided, however*, that prior to the Public Trading Date, such period of time shall not be less than six (6) months (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Holder's estate or by a person who acquires the right to exercise the Option by bequest or inheritance, but only to the extent that the Option is vested on the date of death. In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Holder's termination. If, at the time of death, the Holder is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately cease to be issuable under the Option and shall again become available for issuance under the Plan. The Option may be exercised by the executor or administrator of the Holder's estate or, if none, by the person(s) entitled to exercise the Option under the Holder's will or the laws of descent or distribution. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall again become available for issuance under the Plan.

(g) Regulatory Extension. A Holder's Option Agreement may provide that if the exercise of the Option following the termination of the Holder's status as a Service Provider (other than upon the Holder's death or Disability) would be prohibited at any time solely because the issuance of shares would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of the term of the Option set forth in Section 8 or (ii) the expiration of a period of three (3) months after the termination of the Holder's status as a Service Provider during which the exercise of the Option would not be in violation of such registration requirements.

(h) Early Exercisability. The Administrator may provide in the terms of a Holder's Option Agreement that the Holder may, at any time before the Holder's status as a Service Provider terminates, exercise the Option in whole or in part prior to the full vesting of the Option; *provided, however*, that subject to Section 20, Shares acquired upon exercise of an Option which has not fully vested may be subject to any forfeiture, transfer or other restrictions as the Administrator may determine in its sole discretion.

(i) Buyout Provisions. The Administrator may at any time offer to buyout for a payment in cash or Shares, an Option previously granted, based on such terms and conditions as the Administrator shall establish and communicate to the Holder at the time that such offer is made.

11. Non-Transferability of Options and Stock Purchase Rights. Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Holder, only by the Holder.

12. Stock Purchase Rights.

(a) Rights to Purchase. Stock Purchase Rights may be issued either alone, in addition to, or in tandem with Options granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer; *provided, however*, that to the extent required to comply with applicable securities laws, the purchase price of such Shares shall not be less than the purchase price requirements set forth in Section 260.140.42 of Title 10 of the California Code of Regulations. The offer shall be accepted by execution of a Restricted Stock purchase agreement in the form determined by the Administrator.

(b) Repurchase Right. Unless the Administrator determines otherwise, the Restricted Stock purchase agreement shall grant the Company the right to repurchase Shares acquired upon exercise of a Stock Purchase Right upon the termination of the purchaser's status as a Service Provider for any reason. Subject to Section 20, the purchase price for Shares repurchased by the Company pursuant to such repurchase right and the rate at which such repurchase right shall lapse shall be determined by the Administrator in its sole discretion, and shall be set forth in the Restricted Stock purchase agreement.

(c) Other Provisions. The Restricted Stock purchase agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(d) Rights as a Shareholder. Once the Stock Purchase Right is exercised, the purchaser shall have rights equivalent to those of a shareholder and shall be a shareholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment shall be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 13 of the Plan.

13. Adjustments upon Changes in Capitalization, Merger or Asset Sale.

(a) In the event that the Administrator determines that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), recapitalization, reclassification, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase Common Stock or other securities of the Company, or other similar corporate transaction or event, in the Administrator's sole discretion, affects the Common Stock such that an adjustment is determined by the Administrator to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any Option, Stock Purchase Right or Restricted Stock, then the Administrator shall, in such manner as it may deem equitable, adjust any or all of:

(i) the number and kind of shares of Common Stock (or other securities or property) with respect to which Options or Stock Purchase Rights may be granted or awarded (including, but not limited to, adjustments of the limitations in Section 3 on the maximum number and kind of shares which may be issued and adjustments of the maximum number of Shares that may be purchased by any Holder in any calendar year pursuant to Section 6(c));

(ii) the number and kind of shares of Common Stock (or other securities or property) subject to outstanding Options, Stock Purchase Rights or Restricted Stock; and

(iii) the grant or exercise price with respect to any Option or Stock Purchase Right.

(b) In the event of any transaction or event described in Section 13(a), the Administrator, in its sole discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Option, Stock Purchase Right or Restricted Stock or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Holder's request, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available

under the Plan or with respect to any Option, Stock Purchase Right or Restricted Stock granted or issued under the Plan or to facilitate such transaction or event:

(i) To provide for either the purchase of any such Option, Stock Purchase Right or Restricted Stock for an amount of cash equal to the amount that could have been obtained upon the exercise of such Option or Stock Purchase Right or realization of the Holder's rights had such Option, Stock Purchase Right or Restricted Stock been currently exercisable or payable or fully vested or the replacement of such Option, Stock Purchase Right or Restricted Stock with other rights or property selected by the Administrator in its sole discretion;

(ii) To provide that such Option or Stock Purchase Right shall be exercisable as to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the provisions of such Option or Stock Purchase Right;

(iii) To provide that such Option, Stock Purchase Right or Restricted Stock be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iv) To make adjustments in the number and type of shares of Common Stock (or other securities or property) subject to outstanding Options and Stock Purchase Rights, and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Options, Stock Purchase Rights or Restricted Stock or Options, Stock Purchase Rights or Restricted Stock which may be granted in the future; and/or

(v) To provide that immediately upon the consummation of such event, such Option or Stock Purchase Right shall not be exercisable and shall terminate; *provided*, that for a specified period of time prior to such event, such Option or Stock Purchase Right shall be exercisable as to all Shares covered thereby, and the restrictions imposed under an Option Agreement or Restricted Stock purchase agreement upon some or all Shares may be terminated and, in the case of Restricted Stock, some or all shares of such Restricted Stock may cease to be subject to repurchase, notwithstanding anything to the contrary in the Plan or the provisions of such Option, Stock Purchase Right or Restricted Stock purchase agreement.

(c) If the Company undergoes an Acquisition, then any surviving corporation or entity or acquiring corporation or entity, or affiliate of such corporation or entity, may assume any Options, Stock Purchase Rights or Restricted Stock outstanding under the Plan or may substitute similar stock awards (including an award to acquire the same consideration paid to the stockholders in the transaction described in this subsection 13(c)) for those outstanding under the Plan. In the event any surviving corporation or entity or acquiring corporation or entity in an Acquisition, or affiliate of such corporation or entity, does not assume such Options, Stock Purchase Rights or Restricted Stock or does not substitute similar stock awards for those outstanding under the Plan, then with respect to (i) Options, Stock Purchase Rights or Restricted Stock held by participants in the Plan whose status as a Service Provider has not terminated prior to such event, the vesting of such Options, Stock Purchase Rights or Restricted Stock (and, if

applicable, the time during which such awards may be exercised) shall be accelerated and made fully exercisable and all restrictions thereon shall lapse at least ten (10) days prior to the closing of the Acquisition (and the Options or Stock Purchase Rights terminated if not exercised prior to the closing of such Acquisition) and (ii) any other Options or Stock Purchase Rights outstanding under the Plan, such Options or Stock Purchase rights shall be terminated if not exercised prior to the closing of the Acquisition.

(d) Subject to Section 3, the Administrator may, in its sole discretion, include such further provisions and limitations in any Option, Stock Purchase Right, Restricted Stock agreement or certificate, as it may deem equitable and in the best interests of the Company.

(e) The existence of the Plan, any Option Agreement or Restricted Stock purchase agreement and the Options or Stock Purchase Rights granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, warrants or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

14. Time of Granting Options and Stock Purchase Rights. The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such other date as is determined by the Administrator. Notice of the determination shall be given to each Employee or Consultant to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

15. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time wholly or partially amend, alter, suspend or terminate the Plan. However, without approval of the Company's stockholders given within twelve (12) months before or after the action by the Board, no action of the Board may, except as provided in Section 13, increase the limits imposed in Section 3 on the maximum number of Shares which may be issued under the Plan or extend the term of the Plan under Section 7.

(b) Stockholder Approval. The Board shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Holder, unless mutually agreed otherwise between the Holder and the Administrator, which agreement must be in writing and signed by the Holder and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options, Stock Purchase Rights or Restricted Stock granted or awarded under the Plan prior to the date of such termination.

16. Stockholder Approval. The Plan will be submitted for the approval of the Company's stockholders within twelve (12) months after the date of the Board's initial adoption of the Plan. Options, Stock Purchase Rights or Restricted Stock may be granted or awarded prior to such stockholder approval, provided that such Options, Stock Purchase Rights and Restricted Stock shall not be exercisable, shall not vest and the restrictions thereon shall not lapse prior to the time when the Plan is approved by the stockholders, and provided further that if such approval has not been obtained at the end of said twelve-month period, all Options, Stock Purchase Rights and Restricted Stock previously granted or awarded under the Plan shall thereupon be canceled and become null and void.

17. Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

18. Reservation of Shares. The Company, during the term of this Plan, shall at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

19. Information to Holders and Purchasers. Prior to the Public Trading Date and to the extent required by Section 260.140.46 of Title 10 of the California Code of Regulations, the Company shall provide to each Holder and to each individual who acquires Shares pursuant to the Plan, not less frequently than annually during the period such Holder or purchaser has one or more Options or Stock Purchase Rights outstanding, and, in the case of an individual who acquires Shares pursuant to the Plan, during the period such individual owns such Shares, copies of annual financial statements. Notwithstanding the preceding sentence, the Company shall not be required to provide such statements to key employees whose duties in connection with the Company assure their access to equivalent information.

20. Repurchase Provisions. The Administrator in its sole discretion may provide that the Company may repurchase Shares acquired upon exercise of an Option or Stock Purchase Right upon the occurrence of certain specified events, including, without limitation, a Holder's termination as a Service Provider, divorce, bankruptcy or insolvency; *provided, however*, that any such repurchase right shall be set forth in the applicable Option Agreement or Restricted Stock purchase agreement or in another agreement referred to in such agreement; and *provided further*, that to the extent required by Section 260.140.41 and Section 260.140.42 of Title 10 of the California Code of Regulations, any such repurchase right set forth in an Option or Stock Purchase Right granted prior to the Public Trading Date to a person who is not an Officer, Director or Consultant shall be upon the following terms: (i) if the repurchase option gives the Company the right to repurchase the shares upon termination as a Service Provider at not less than the Fair Market Value of the shares to be purchased on the date of termination of status as a Service Provider, then (A) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares within ninety (90) days of termination of status as a

Service Provider (or in the case of shares issued upon exercise of Options or Stock Purchase Rights after such date of termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Administrator and the Plan participant and (B) the right terminates when the shares become publicly traded and (ii) if the repurchase option gives the Company the right to repurchase the Shares upon termination as a Service Provider at the original purchase price for such Shares, then (A) the right to repurchase at the original purchase price shall lapse at the rate of at least twenty percent (20%) of the shares per year over five (5) years from the date the Option or Stock Purchase Right is granted (without respect to the date the Option or Stock Purchase Right was exercised or became exercisable) and (B) the right to repurchase shall be exercised for cash or cancellation of purchase money indebtedness for the shares within ninety (90) days of termination of status as a Service Provider (or, in the case of shares issued upon exercise of Options or Stock Purchase Rights, after such date of termination, within ninety (90) days after the date of the exercise) or such longer period as may be agreed to by the Company and the Plan participant.

21. Investment Intent. The Company may require a Plan participant, as a condition of exercising or acquiring stock under any Option or Stock Purchase Right, (i) to give written assurances satisfactory to the Company as to the participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Option or Stock Purchase Right and (ii) to give written assurances satisfactory to the Company stating that the participant is acquiring the stock subject to the Option or Stock Purchase Right for the participant's own account and not with any present intention of selling or otherwise distributing the stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (A) the issuance of the shares upon the exercise or acquisition of stock under the applicable Option or Stock Purchase Right has been registered under a then currently effective registration statement under the Securities Act or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the stock.

22. Governing Law. The validity and enforceability of this Plan shall be governed by and construed in accordance with the laws of the State of California without regard to otherwise governing principles of conflicts of law.

Exhibit 10.2

AIRXPANDERS, INC.

2005 EQUITY INCENTIVE PLAN

STOCK OPTION AGREEMENT

AirXpanders, Inc. (the "Company"), pursuant to its 2005 Equity Incentive Plan (the "Plan"), hereby grants to the Optionee listed below ("Optionee"), an option to purchase the number of shares of the Company's Common Stock set forth below, subject to the terms and conditions of the Plan and this Stock Option Agreement. Unless otherwise defined herein, the terms defined in the Plan shall have the same defined meanings in this Stock Option Agreement.

I. NOTICE OF STOCK OPTION GRANT

Optionee:	F. Mark Payne
Date of Stock Option Agreement:	
Date of Grant:	October 3, 2007
Vesting Commencement Date:	October 3, 2007
Exercise Price per Share:	$0.05
Total Number of Shares Granted:	80,000
Total Exercise Price:	$4,000
Term/Expiration Date:	October 2, 2017

Type of Option: ☒ Incentive Stock Option ☐ Non-Qualified Stock Option

Exercise Schedule: ☒ Same as Vesting Schedule ☐ Early Exercise Permitted

Vesting Schedule: For so long as you continue to be a Service Provider to the Company, the Shares covered by this Option shall vest as follows:

20,000 shares shall vest on April 23, 2008 and 1/36 of the remaining shares subject to the Option (rounded down to the next whole number of shares) shall vest on each calendar month thereafter (commencing May 23, 2008).

Termination Period: This Option may be exercised, to the extent vested, for three (3) months after Optionee ceases to be a Service Provider, or such longer period as may be applicable upon the death or disability of Optionee as provided herein (or, if not provided herein, then as provided in the Plan), but in no event later than the Term/Expiration Date as provided above.

II. AGREEMENT

1. Grant of Option. The Company hereby grants to the Optionee an Option to purchase the number of shares of Common Stock (the "Shares") set forth in the Notice of Grant, at the exercise price per share set forth in the Notice of Grant (the "Exercise Price"). Notwithstanding anything to the contrary anywhere else in this Option Agreement, this grant of an Option is subject to the terms, definitions and provisions of the Plan adopted by the Company, which is incorporated herein by reference.

If designated in the Notice of Grant as an Incentive Stock Option, this Option is intended to qualify as an Incentive Stock Option as defined in Section 422 of the Code; *provided, however*, that to the extent that the aggregate Fair Market Value of stock with respect to which Incentive Stock Options (within the meaning of Code Section 422, but without regard to Code Section 422(d)), including the Option, are exercisable for the first time by the Optionee during any calendar year (under the Plan and all other incentive stock option plans of the Company or any Subsidiary) exceeds $100,000, such options shall be treated as not qualifying under Code Section 422, but rather shall be treated as Non-Qualified Stock Options to the extent required by Code Section 422. The rule set forth in the preceding sentence shall be applied by taking options into account in the order in which they were granted. For purposes of these rules, the Fair Market Value of stock shall be determined as of the time the option with respect to such stock is granted.

2. Exercise of Option. This Option is exercisable as follows:

(a) Right to Exercise.

(i) This Option shall be exercisable cumulatively according to the vesting schedule set out in the Notice of Grant. Alternatively, this Option may be exercised in whole or in part at such times as are established by the Administrator as to Shares which have not yet vested. For purposes of this Stock Option Agreement, Shares subject to this Option shall vest based on Optionee's continued status as a Service Provider. Vested Shares shall not be subject to the Company's Repurchase Option (as set forth in the Restricted Stock Purchase Agreement).

(ii) As a condition to exercising this Option for unvested Shares, the Optionee shall execute the Restricted Stock Purchase Agreement attached hereto as Exhibit C-1.

(iii) This Option may not be exercised for a fraction of a Share.

(iv) In the event of Optionee's death, disability or other termination of the Optionee's status as a Service Provider, the exercisability of the Option is governed by Sections 7, 8 and 9 below.

(v) In no event may this Option be exercised after the date of expiration of the term of this Option as set forth in the Notice of Grant.

(b) Method of Exercise. This Option shall be exercisable by written Notice (in the form attached as Exhibit A). The Notice must state the number of Shares for which the Option is being exercised, and such other representations and agreements with respect to such shares of Common Stock as may be required by the Company pursuant to the provisions of the Plan. The Notice must be signed by the Optionee and, together with an executed copy of the Restricted Stock Purchase Agreement, if applicable, shall be delivered in person or by certified mail to the Secretary of the Company. The Notice and Restricted Stock Purchase Agreement must be accompanied by payment of the Exercise Price plus payment of any applicable withholding tax. This Option shall be deemed to be exercised upon receipt by the Company of such written Notice and Restricted Stock Purchase Agreement, if applicable, accompanied by the Exercise Price and payment of any applicable withholding tax.

No Shares shall be issued pursuant to the exercise of an Option unless such issuance and such exercise comply with all relevant provisions of law and the requirements of any stock exchange upon which the Shares may then be listed. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to the Optionee on the date on which the Option is exercised with respect to such Shares.

3. Optionee's Representations. If the Shares purchasable pursuant to the exercise of this Option have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), at the time this Option is exercised, Optionee shall, if required by the Company, concurrently with the exercise of all or any portion of this Option, deliver to the Company his or her Investment Representation Statement in the form attached hereto as Exhibit B.

4. Lock-Up Period. Optionee hereby agrees that if so requested by the Company or any representative of the underwriters (the "Managing Underwriter") in connection with any registration of the offering of any securities of the Company under the Securities Act, Optionee shall not sell or otherwise transfer any Shares or other securities of the Company during the 180-day period (or such period as may be requested in writing by the Managing Underwriter and agreed to in writing by the Company) (the "Market Standoff Period") following the effective date of a registration statement of the Company filed under the Securities Act; *provided, however*, that such restriction shall apply only to the first registration statement of the Company to become effective under the Securities Act that includes securities to be sold on behalf of the Company to the public in an underwritten public offering under the Securities Act. The Company may impose stop-transfer instructions with respect to securities subject to the foregoing restrictions until the end of such Market Standoff Period and these restrictions shall be binding on any transferee of such Shares.

5. Method of Payment. Payment of the Exercise Price shall be by any of the following, or a combination thereof, at the election of the Optionee:

(a) cash;

(b) check;

(c) with the consent of the Administrator and to the extent allowed by the Sarbanes-Oxley Act of 2002, a full recourse promissory note bearing interest (at no less than such rate as is a market rate of interest and which then precludes the imputation of interest under the Code), payable upon such terms as may be prescribed by the Administrator and structured to comply with all Applicable Laws;

(d) with the consent of the Administrator, surrender of other shares of Common Stock of the Company which (A) in the case of Shares acquired from the Company, have been owned by the Optionee for more than six (6) months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the Exercise Price of the Shares as to which the Option is being exercised;

(e) with the consent of the Administrator, surrendered Shares issuable upon the exercise of the Option having a Fair Market Value on the date of exercise equal to the aggregate Exercise Price of the Option or exercised portion thereof;

(f) with the consent of the Administrator, property of any kind which constitutes good and valuable consideration;

(g) with the consent of the Administrator, delivery of a notice that the Optionee has placed a market sell order with a broker with respect to Shares then issuable upon exercise of the Option and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate Exercise Price; *provided*, that payment of such proceeds is then made to the Company upon settlement of such sale; or

(h) with the consent of the Administrator, any combination of the foregoing methods of payment.

6. Restrictions on Exercise. This Option may not be exercised until the Plan has been approved by the stockholders of the Company. If the issuance of Shares upon such exercise or if the method of payment for such shares would constitute a violation of any applicable federal or state securities or other law or regulation, then the Option may also not be exercised. The Company may require Optionee to make any representation and warranty to the Company as may be required by any applicable law or regulation before allowing the Option to be exercised.

7. Termination of Relationship. If Optionee ceases to be a Service Provider (other than by reason of the Optionee's death or the total and permanent disability of the Optionee as defined in Code Section 22(e)(3)), Optionee may exercise this Option during the Termination Period set out in the Notice of Grant, to the extent the Option was vested at the date on which Optionee ceases to be a Service Provider. To the extent that the Option is not vested at the date on which Optionee ceases to be a Service Provider, or if Optionee does not exercise this Option within the time specified herein, the Option shall terminate.

8. Disability of Optionee. If Optionee ceases to be a Service Provider as a result of his or her total and permanent disability as defined in Code Section 22(e)(3), Optionee may exercise the Option to the extent the Option was vested at the date on which Optionee ceases to be a Service Provider, but only within twelve (12) months from such date (and in no event later than the expiration date of the term of this Option as set forth in the Notice of Grant). To the

extent that the Option is not vested at the date on which Optionee ceases to be a Service Provider, or if Optionee does not exercise such Option within the time specified herein, the Option shall terminate.

9. Death of Optionee. If Optionee ceases to be a Service Provider as a result of the death of Optionee, the vested portion of the Option may be exercised at any time within twelve (12) months following the date of death (and in no event later than the expiration date of the term of this Option as set forth in the Notice of Grant) by Optionee's estate or by a person who acquires the right to exercise the Option by bequest or inheritance. To the extent that the Option is not vested at the date of death, or if the Option is not exercised within the time specified herein, the Option shall terminate.

10. Non-Transferability of Option. This Option may not be transferred in any manner except by will or by the laws of descent or distribution. It may be exercised during the lifetime of Optionee only by Optionee. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

11. Term of Option. This Option may be exercised only within the term set out in the Notice of Grant.

12. Restrictions on Shares. Optionee hereby agrees that Shares purchased upon the exercise of the Option shall be subject to such terms and conditions as the Administrator shall determine in its sole discretion, including, without limitation, restrictions on the transferability of Shares, the right of the Company to repurchase Shares, and a right of first refusal in favor of the Company with respect to permitted transfers of Shares. Such terms and conditions may, in the Administrator's sole discretion, be contained in the Exercise Notice with respect to the Option or in such other agreement as the Administrator shall determine and which the Optionee hereby agrees to enter into at the request of the Company.

(Signature Page Follows)

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall constitute one document.

AIRXPANDERS, INC.

By: _____
Name: Chris Jones
Title: President

OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE OPTION HEREOF IS EARNED ONLY BY CONTINUING CONSULTANCY OR EMPLOYMENT AT THE WILL OF THE COMPANY (NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED THIS OPTION OR ACQUIRING SHARES HEREUNDER). OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT NOTHING IN THIS AGREEMENT, NOR IN THE COMPANY'S 2005 EQUITY INCENTIVE PLAN, WHICH IS INCORPORATED HEREIN BY REFERENCE, SHALL CONFER UPON OPTIONEE ANY RIGHT WITH RESPECT TO CONTINUATION OF EMPLOYMENT OR CONSULTANCY BY THE COMPANY, NOR SHALL IT INTERFERE IN ANY WAY WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S EMPLOYMENT OR CONSULTANCY AT ANY TIME, WITH OR WITHOUT CAUSE AND WITH OR WITHOUT PRIOR NOTICE.

Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof. Optionee hereby accepts this Option subject to all of the terms and provisions hereof. Optionee has reviewed the Plan and this Option in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option and fully understands all provisions of the Option. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions arising under the Plan or this Option. Optionee further agrees to notify the Company upon any change in the residence address indicated below.

Dated: _____

_____
OPTIONEE

Residence Address:

_____

_____

EXHIBIT A

AIRXPANDERS, INC.

2005 EQUITY INCENTIVE PLAN

EXERCISE NOTICE

AirXpanders, Inc.
Attention: Stock Administration

1. Exercise of Option. Effective as of today, , , the undersigned ("Optionee") hereby elects to exercise Optionee's option to purchase shares of the Common Stock (the "Shares") of AirXpanders, Inc. (the "Company") under and pursuant to the AirXpanders, Inc. 2005 Equity Incentive Plan (the "Plan") and the Stock Option Agreement dated , , (the "Option Agreement"). Capitalized terms used herein without definition shall have the meanings given in the Option Agreement.

Date of Grant:		October 3, 2007
Number of Shares as to which Option is Exercised:		
Exercise Price per Share:		$0.05
Total Exercise Price:		
Certificate to be issued in name of:		
Cash Payment delivered herewith:	☐	$
Promissory note delivered herewith:	☐	$

Type of Option: ☒ Incentive Stock Option ☐ Non-Qualified Stock Option

2. Representations of Optionee. Optionee acknowledges that Optionee has received, read and understood the Plan and the Option Agreement. Optionee agrees to abide by and be bound by their terms and conditions.

3. Rights as Stockholder. Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to Shares subject to the Option, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 13 of the Plan.

Optionee shall enjoy rights as a stockholder until such time as Optionee disposes of the Shares or the Company and/or its assignee(s) exercises the Right of First Refusal

hereunder. Upon such exercise, Optionee shall have no further rights as a holder of the Shares so purchased except the right to receive payment for the Shares so purchased in accordance with the provisions of this Agreement, and Optionee shall forthwith cause the certificate(s) evidencing the Shares so purchased to be surrendered to the Company for transfer or cancellation.

4. Optionee's Rights to Transfer Shares

(a) Company's Right of First Refusal. Before any Shares held by Optionee or any permitted transferee (each, a "Holder") may be sold, pledged, assigned, hypothecated, transferred, or otherwise disposed of (each, a "Transfer"), the Company or its assignee(s) shall have a right of first refusal to purchase the Shares proposed to be Transferred on the terms and conditions set forth in this Section (the "Right of First Refusal").

(i) Notice of Proposed Transfer. In the event any Holder desires to Transfer any Shares, the Holder shall deliver to the Company a written notice (the "Notice") stating: (w) the Holder's bona fide intention to sell or otherwise Transfer such Shares; (x) the name of each proposed purchaser or other transferee ("Proposed Transferee"); (y) the number of Shares to be Transferred to each Proposed Transferee and (z) the bona fide cash price for which the Holder proposes to Transfer the Shares (the "Offered Price"), and the Holder shall offer such Shares at the Offered Price to the Company or its assignee(s).

(ii) Exercise of Right of First Refusal. Within thirty (30) days after receipt of the Notice, the Company and/or its assignee(s) may elect in writing to purchase all, but not less than all, of the Shares proposed to be Transferred to any one or more of the Proposed Transferees. The purchase price will be determined in accordance with subsection (iii) below.

(iii) Purchase Price. The purchase price ("Purchase Price") for the Shares repurchased under this Section shall be the Offered Price.

(iv) Payment. Payment of the Purchase Price shall be made, at the option of the Company or its assignee(s), in cash (by check), by cancellation of all or a portion of any outstanding indebtedness of the Holder to the Company (or, in the case of repurchase by an assignee, to the assignee), or by any combination thereof within thirty (30) days after receipt of the Notice or in the manner and at the times mutually agreed to by the Company and the Holder.

(v) Holder's Right to Transfer. If all of the Shares proposed in the Notice to be Transferred are not purchased by the Company and/or its assignee(s) as provided in this Section, then the Holder may sell or otherwise Transfer such Shares to that Proposed Transferee at the Offered Price or at a higher price, provided that such sale or other Transfer is consummated within one hundred twenty (120) days after the date of the Notice and provided further that any such sale or other Transfer is effected in accordance with any applicable securities laws and the Proposed Transferee agrees in writing that the provisions of this Section and the Restricted Stock Purchase Agreement, if applicable, shall continue to apply to the Shares in the hands of such Proposed Transferee. If the Shares described in the Notice are not Transferred to the Proposed Transferee within such 120-day period, a new Notice shall be given to the Company, and the Company and/or its assignees shall again be offered the Right of First Refusal as provided herein before any Shares held by the Holder may be sold or otherwise Transferred.

(b) Exception for Certain Family Transfers. Anything to the contrary contained in this Section notwithstanding, the Transfer of any or all of the Shares during the Optionee's lifetime or upon the Optionee's death by will or intestacy to the Optionee's Immediate Family or a trust for the benefit of the Optionee's Immediate Family shall be exempt from the Right of First Refusal. As used herein, "Immediate Family" shall mean spouse, lineal descendant or antecedent, father, mother, brother or sister or stepchild (whether or not adopted). In such case, the transferee or other recipient shall receive and hold the Shares so Transferred subject to the provisions of this Section (including the Right of First Refusal) and the Restricted Stock Purchase Agreement, if applicable, and there shall be no further Transfer of such Shares except in accordance with the terms of this Section.

(c) Termination of Right of First Refusal. The Right of First Refusal shall terminate as to all Shares upon a sale of Common Stock of the Company to the general public pursuant to a registration statement filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended (a "Public Offering").

(d) Transfer Restrictions. Any transfer or sale of the Shares is subject to restrictions on transfer imposed by any applicable state and federal securities laws. Any Transfer or attempted Transfer of any of the Shares not in accordance with the terms of this Agreement shall be void and the Company may enforce the terms of this Agreement by stop transfer instructions or similar actions by the Company and its agents or designees.

5. Tax Consultation. Optionee understands that Optionee may suffer adverse tax consequences as a result of Optionee's purchase or disposition of the Shares. Optionee represents that Optionee has consulted with any tax consultants Optionee deems advisable in connection with the purchase or disposition of the Shares and that Optionee is not relying on the Company for any tax advice.

6. Restrictive Legends and Stop-Transfer Orders.

(a) Legends. Optionee understands and agrees that the Company shall cause the legends set forth below or legends substantially equivalent thereto, to be placed upon any certificate(s) evidencing ownership of the Shares together with any other legends that may be required by state or federal securities laws:

> THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR, IN THE OPINION OF COUNSEL IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER OF THESE SECURITIES, SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION IS IN COMPLIANCE THEREWITH.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS ON TRANSFER AND RIGHT OF FIRST REFUSAL OPTIONS HELD BY THE ISSUER OR ITS ASSIGNEE(S) AS SET FORTH IN THE EXERCISE NOTICE BETWEEN THE ISSUER AND THE ORIGINAL HOLDER OF THESE SHARES, A COPY OF WHICH MAY BE OBTAINED AT THE PRINCIPAL OFFICE OF THE ISSUER. SUCH TRANSFER RESTRICTIONS AND RIGHT OF FIRST REFUSAL ARE BINDING ON TRANSFEREES OF THESE SHARES.

(b) Stop-Transfer Notices. Optionee agrees that, in order to ensure compliance with the restrictions referred to herein, the Company may issue appropriate "stop transfer" instructions to its transfer agent, if any, and that, if the Company transfers its own securities, it may make appropriate notations to the same effect in its own records.

(c) Refusal to Transfer. The Company shall not be required (i) to transfer on its books any Shares that have been sold or otherwise transferred in violation of any of the provisions of this Agreement or (ii) to treat as owner of such Shares or to accord the right to vote or pay dividends to any purchaser or other transferee to whom such Shares shall have been so transferred.

7. Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, this Agreement shall be binding upon Optionee and his or her heirs, executors, administrators, successors and assigns.

8. Interpretation. Any dispute regarding the interpretation of this Agreement shall be submitted by Optionee or by the Company forthwith to the Company's Board of Directors or committee thereof that is responsible for the administration of the Plan (the "Administrator"), which shall review such dispute at its next regular meeting. The resolution of such a dispute by the Administrator shall be final and binding on the Company and on Optionee.

9. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding that body of law pertaining to conflicts of law. Should any provision of this Agreement be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.

10. Notices. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States mail by certified mail, with postage and fees prepaid, addressed to the other party at its address as shown below beneath its signature, or to such other address as such party may designate in writing from time to time to the other party.

11. Further Instruments. The parties agree to execute such further instruments and to take such further action as may be reasonably necessary to carry out the purposes and intent of this Agreement.

12. Delivery of Payment. Optionee herewith delivers to the Company the full Exercise Price for the Shares, as well as any applicable withholding tax.

13. Entire Agreement. The Plan and Option Agreement are incorporated herein by reference. This Agreement, the Plan, the Option Agreement, the Investment Representation Statement and the Restricted Stock Purchase Agreement, if applicable, constitute the entire agreement of the parties and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof.

Accepted by:

AIRXPANDERS, INC.

By: _____

Name: _____

Its: _____

Submitted by:

OPTIONEE

_____

Optionee

Address:

EXHIBIT B

INVESTMENT REPRESENTATION STATEMENT

OPTIONEE :

COMPANY : AirXpanders, Inc.

SECURITY : Common Stock

AMOUNT :

DATE :

In connection with the purchase of the above-listed shares of Common Stock (the "Securities") of AirXpanders, Inc. (the "Company"), the undersigned (the "Optionee") represents to the Company the following:

(a) Optionee is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities. Optionee is acquiring these Securities for investment for Optionee's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933, as amended (the "Securities Act").

(b) Optionee acknowledges and understands that the Securities constitute "restricted securities" under the Securities Act and have not been registered under the Securities Act in reliance upon a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Optionee's investment intent as expressed herein. Optionee understands that the Securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Optionee further acknowledges and understands that the Company is under no obligation to register the Securities. Optionee understands that the certificate evidencing the Securities will be imprinted with a legend which prohibits the transfer of the Securities unless they are registered or such registration is not required in the opinion of counsel satisfactory to the Company and any other legend required under applicable state securities laws.

(c) Optionee is familiar with the provisions of Rule 701 and Rule 144, each promulgated under the Securities Act, which, in substance, permit limited public resale of "restricted securities" acquired, directly or indirectly from the issuer thereof, in a non-public offering subject to the satisfaction of certain conditions. Rule 701 provides that if the issuer qualifies under Rule 701 at the time of the grant of the Option to the Optionee, the exercise will be exempt from registration under the Securities Act. In the event the Company becomes subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, ninety (90) days thereafter (or such

longer period as any market stand-off agreement may require) the Securities exempt under Rule 701 may be resold, subject to the satisfaction of certain of the conditions specified by Rule 144, including: (1) the resale being made through a broker in an unsolicited "broker's transaction" or in transactions directly with a market maker (as said term is defined under the Securities Exchange Act of 1934); and, in the case of an affiliate, (2) the availability of certain public information about the Company, (3) the amount of Securities being sold during any three (3) month period not exceeding the limitations specified in Rule 144(e), and (4) the timely filing of a Form 144, if applicable.

In the event that the Company does not qualify under Rule 701 at the time of grant of the Option, then the Securities may be resold in certain limited circumstances subject to the provisions of Rule 144, which requires the resale to occur not less than one year after the later of the date the Securities were sold by the Company or the date the Securities were sold by an affiliate of the Company, within the meaning of Rule 144; and, in the case of acquisition of the Securities by an affiliate, or by a non-affiliate who subsequently holds the Securities less than two (2) years, the satisfaction of the conditions set forth in sections (1), (2), (3) and (4) of the paragraph immediately above.

(d) Optionee further understands that in the event all of the applicable requirements of Rule 701 or 144 are not satisfied, registration under the Securities Act, compliance with Regulation A, or some other registration exemption will be required; and that, notwithstanding the fact that Rules 144 and 701 are not exclusive, the Staff of the Securities and Exchange Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and otherwise than pursuant to Rules 144 or 701 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, and that such persons and their respective brokers who participate in such transactions do so at their own risk. Optionee understands that no assurances can be given that any such other registration exemption will be available in such event.

Signature of Optionee:

_____

Optionee

Date: _____, ____

EXHIBIT C-1

AIRXPANDERS, INC.

2005 EQUITY INCENTIVE PLAN

RESTRICTED STOCK PURCHASE AGREEMENT

THIS RESTRICTED STOCK PURCHASE AGREEMENT is made between (the "Purchaser") and AirXpanders, Inc. (the "Company"), as of , .

RECITALS

(1) Pursuant to the exercise of the Option granted to Purchaser under the Company's 2005 Equity Incentive Plan and pursuant to the Stock Option Agreement (the "Option Agreement") dated , , by and between the Company and Purchaser with respect to such grant, which Option Agreement is hereby incorporated by reference, Purchaser has elected to purchase of those shares which have not become vested under the vesting schedule set forth in the Option Agreement ("Unvested Shares"). The Unvested Shares and the shares subject to the Option Agreement which have become vested are sometimes collectively referred to herein as the "Shares".

(2) As required by the Option Agreement, as a condition to Purchaser's election to exercise the option, Purchaser must execute this Restricted Stock Purchase Agreement, which sets forth the rights and obligations of the parties with respect to Shares acquired upon exercise of the Option.

1. Repurchase Option.

(a) If Purchaser ceases to be a Service Provider (as defined in the Company's 2005 Equity Incentive Plan) for any reason, including for cause, death, and disability, the Company shall have the right and option to purchase from Purchaser, or Purchaser's personal representative, as the case may be, all of Purchaser's Unvested Shares as of the date on which Purchaser ceases to be a Service Provider at the lesser of the exercise price paid by Purchaser for such Shares in connection with the exercise of the Option or the Fair Market Value of the Unvested Shares on the date the Purchaser ceases to be a Service Provider (the "Repurchase Option").

(b) The Company may exercise its Repurchase Option by delivering, personally or by registered mail, to Purchaser (or his or her transferee or legal representative, as the case may be), within ninety (90) days of the date on which Purchaser ceases to be a Service Provider, a notice in writing indicating the Company's intention to exercise the Repurchase Option and setting forth a

date for closing not later than thirty (30) days from the mailing of such notice. The closing shall take place at the Company's office. At the closing, the holder of the certificates for the Unvested Shares being transferred shall deliver the stock certificate or certificates evidencing the Unvested Shares, and the Company shall deliver the purchase price therefor.

(c) At its option, the Company may elect to make payment for the Unvested Shares to a bank selected by the Company. The Company shall avail itself of this option by a notice in writing to Purchaser stating the name and address of the bank, date of closing, and waiving the closing at the Company's office.

(d) If the Company does not elect to exercise the Repurchase Option conferred above by giving the requisite notice within ninety (90) days following the date on which Purchaser ceases to be a Service Provider, the Repurchase Option shall terminate.

(e) One hundred percent (100%) of the Unvested Shares shall initially be subject to the Repurchase Option. The Unvested Shares shall be released from the Repurchase Option in accordance with the Vesting Schedule set forth in the Notice of Grant until all Shares are released from the Repurchase Option. Fractional Shares shall be rounded to the nearest whole share.

2. Transferability of the Shares; Escrow.

(a) Purchaser hereby authorizes and directs the secretary of the Company, or such other person designated by the Company from time to time, to transfer the Unvested Shares as to which the Repurchase Option has been exercised from Purchaser to the Company.

(b) To insure the availability for delivery of Purchaser's Unvested Shares upon repurchase by the Company pursuant to the Repurchase Option under Section 1, Purchaser hereby appoints the Company's Secretary, or any other person designated by the Company from time to time as escrow agent, as its attorney-in-fact to sell, assign and transfer unto the Company, such Unvested Shares, if any, repurchased by the Company pursuant to the Repurchase Option and shall, upon execution of this Agreement, deliver and deposit with the Secretary of the Company, or such other person designated by the Company from time to time, the share certificate(s) representing the Unvested Shares, together with the stock assignment duly endorsed in blank, attached hereto as Exhibit C-2. The Unvested Shares and stock assignment shall be held by the Secretary in escrow, pursuant to the Joint Escrow Instructions of the Company and Purchaser attached as Exhibit C-3 hereto, until the Company exercises its Repurchase Option as provided in Section 1, until such Unvested Shares are vested, or until such time as this Agreement no longer is in effect. As a further condition to the Company's obligations under this Agreement, the spouse of Purchaser, if any, shall execute and deliver to the Company the Consent of Spouse attached hereto as Exhibit C-4. Upon vesting of the Unvested Shares, the escrow agent shall promptly deliver to Purchaser the certificate or certificates representing such Shares in the escrow agent's possession belonging to Purchaser, and the escrow agent shall be discharged of all further obligations hereunder; provided, however, that the escrow agent shall nevertheless retain such certificate or certificates as escrow agent if so required pursuant to other restrictions imposed pursuant to this Agreement.

(c) The Company, or its designee, shall not be liable for any act it may do or omit to do with respect to holding the Shares in escrow and while acting in good faith and in the exercise of its judgment.

(d) Transfer or sale of the Shares is subject to restrictions on transfer imposed by any applicable state and federal securities laws. Any transferee shall hold such Shares subject to all the provisions hereof and the Exercise Notice executed by Purchaser with respect to any Unvested Shares purchased by Purchaser and shall acknowledge the same by signing a copy of this Agreement. Any transfer or attempted transfer of any of the Shares not in accordance with the terms of this Agreement shall be void and the Company may enforce the terms of this Agreement by stop transfer instructions or similar actions by the Company and its agents or designees.

3. Ownership, Voting Rights, Duties. This Agreement shall not affect in any way the ownership, voting rights or other rights or duties of Purchaser, except as specifically provided herein.

4. Legends. The share certificate evidencing the Shares issued hereunder shall be endorsed with the following legend (in addition to any legend required under applicable securities laws):

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN RESTRICTIONS UPON TRANSFER AND RIGHTS OF REPURCHASE AS SET FORTH IN AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

5. Adjustment for Stock Split. All references to the number of Shares and the purchase price of the Shares in this Agreement shall be appropriately adjusted to reflect any stock split, stock dividend or other change in the Shares which may be made by the Company after the date of this Agreement.

6. Notices. Notices required hereunder shall be given in person or by registered mail to the address of Purchaser shown on the records of the Company, and to the Company at its principal executive office.

7. Survival of Terms. This Agreement shall apply to and bind Purchaser and the Company and their respective permitted assignees and transferees, heirs, legatees, executors, administrators and legal successors.

8. Section 83(b) Elections.

(a) Election for Unvested Shares Purchased Pursuant to a Non-Qualified Stock Option. Purchaser hereby acknowledges that he or she has been informed that, with respect to the exercise of a Non-Qualified Stock Option for Unvested Shares, that unless an election is filed by Purchaser with the Internal Revenue Service and, if necessary, the proper state taxing authorities, within thirty (30) days of the purchase of the Shares, electing pursuant to Section 83(b) of the Code (and similar state tax provisions if applicable) to be taxed currently on any difference between the purchase price of the Shares and their Fair Market Value on the date of purchase, there will be a recognition of taxable income to the Optionee, measured by the excess, if any, of the fair market value of the Shares, at the time the Company's Repurchase Option lapses over the purchase price for the Shares. Optionee represents that Optionee has consulted any tax consultant(s) Optionee deems advisable in connection with the purchase of the Shares or the filing of the Election under Section 83(b) and similar tax provisions.

(b) Election for Unvested Shares Purchased Pursuant to an Incentive Stock Option. Purchaser hereby acknowledges that he or she has been informed that, with respect to the exercise of an Incentive Stock Option for Unvested Shares, that unless an election is filed by Purchaser with the Internal Revenue Service and, if necessary, the proper state taxing authorities, within thirty (30) days of the purchase of the Shares, electing pursuant to Section 83(b) of the Code (and similar state tax provisions if applicable) to be taxed currently on any difference between the purchase price of the Shares and their Fair Market Value on the date of purchase, there will be a recognition of income to the Purchaser, for alternative minimum tax purposes, measured by the excess, if any, of the fair market value of the Shares at the time the Company's Repurchase Option lapses over the purchase price for the Shares. Purchaser represents that Purchaser has consulted any tax consultant(s) Purchaser deems advisable in connection with the purchase of the Shares or the filing of the Election under Section 83(b) and similar tax provisions.

PURCHASER ACKNOWLEDGES THAT IT IS PURCHASER'S SOLE RESPONSIBILITY AND NOT THE COMPANY'S TO FILE TIMELY THE ELECTION UNDER SECTION 83(b), EVEN IF PURCHASER REQUESTS THE COMPANY OR ITS REPRESENTATIVE TO MAKE THIS FILING ON PURCHASER'S BEHALF.

9. Representations. Purchaser has reviewed with his or her own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement. Purchaser is relying solely on such advisors and not on any statements or representations of the Company or any of its agents. Purchaser understands that Purchaser (and not the Company) shall be responsible for his or her own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement.

10. Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of California excluding that body of law pertaining to conflicts of law. Should any provision of this Agreement be determined by a court of law to be illegal or unenforceable, the other provisions shall nevertheless remain effective and shall remain enforceable.

Purchaser represents that he or she has read this Agreement and is familiar with its terms and provisions. Purchaser hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Board upon any questions arising under this Agreement.

IN WITNESS WHEREOF, this Agreement is deemed made as of the date first set forth above.

AIRXPANDERS, INC.

By: _____
Title: _____

PURCHASER

By: _____
Name: _____

Address:

_____

_____

EXHIBIT C-2

ASSIGNMENT SEPARATE FROM CERTIFICATE

FOR VALUE RECEIVED I, _____, hereby sell, assign and transfer unto _____ (_____) shares of the Common Stock of AirXpanders, Inc. registered in my name on the books of said corporation represented by Certificate No. ____ herewith and do hereby irrevocably constitute and appoint _____ to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

This Assignment Separate from Certificate may be used only in accordance with the Restricted Stock Purchase Agreement between AirXpanders, Inc. and the undersigned dated _____, ____.

Dated: _____, ____

Signature: _____

INSTRUCTIONS: Please do not fill in any blanks other than the signature line. The purpose of this assignment is to enable the Company to exercise the Repurchase Option, as set forth in the Restricted Stock Purchase Agreement, without requiring additional signatures on the part of Purchaser.

EXHIBIT C-3

JOINT ESCROW INSTRUCTIONS

_____, ____

Sheryl Miller, Assistant Secretary
Heller Ehrman, LLP
333 Bush Street
San Francisco, CA 94104

As Escrow Agent for both AirXpanders, Inc. (the "Company") and the undersigned purchaser of stock of the Company (the "Purchaser"), you are hereby authorized and directed to hold the documents delivered to you pursuant to the terms of that certain Restricted Stock Purchase Agreement ("Agreement") between the Company and the undersigned, in accordance with the following instructions:

1. In the event the Company and/or any assignee of the Company (referred to collectively for convenience herein as the "Company") exercises the Company's Repurchase Option set forth in the Agreement, the Company shall give to Purchaser and you a written notice specifying the number of shares of stock to be purchased, the purchase price, and the time for a closing hereunder at the principal office of the Company. Purchaser and the Company hereby irrevocably authorize and direct you to close the transaction contemplated by such notice in accordance with the terms of said notice.

2. At the closing, you are directed (a) to date the stock assignments necessary for the transfer in question, (b) to fill in the number of shares being transferred, and (c) to deliver the same, together with the certificate evidencing the shares of stock to be transferred, to the Company or its assignee, against the simultaneous delivery to you of the purchase price (by cash, a check, or a combination thereof) for the number of shares of stock being purchased pursuant to the exercise of the Company's Repurchase Option.

3. Purchaser irrevocably authorizes the Company to deposit with you any certificates evidencing shares of stock to be held by you hereunder and any additions and substitutions to said shares as defined in the Agreement. Purchaser does hereby irrevocably constitute and appoint you as Purchaser's attorney-in-fact and agent for the term of this escrow to execute, with respect to such securities, all documents necessary or appropriate to make such securities negotiable and to complete any transaction herein contemplated, including but not limited to the filing with any applicable state blue sky authority of any required applications for consent to, or notice of transfer of, the securities. Subject to the provisions of this paragraph 3, Purchaser shall exercise all rights and privileges of a stockholder of the Company while the stock is held by you.

4. Upon written request of Purchaser, but no more than once per calendar year, unless the Company's Repurchase Option has been exercised, you will deliver to Purchaser a certificate or certificates representing the number of shares of stock as are not then subject to the Company's Repurchase Option. Within one hundred twenty (120) days after Purchaser ceases to be a Service Provider, you will deliver to Purchaser a certificate or certificates representing the aggregate number of shares held or issued pursuant to the Agreement and not purchased by the Company or its assignees pursuant to exercise of the Company's Repurchase Option.

5. If at the time of termination of this escrow you should have in your possession any documents, securities, or other property belonging to Purchaser, you shall deliver all of the same to Purchaser and shall be discharged of all further obligations hereunder.

6. Your duties hereunder may be altered, amended, modified or revoked only by a writing signed by all of the parties hereto.

7. You shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed by you to be genuine and to have been signed or presented by the proper party or parties. You shall not be personally liable for any act you may do or omit to do hereunder as Escrow Agent or as attorney-in-fact for Purchaser while acting in good faith, and any act done or omitted by you pursuant to the advice of your own attorneys shall be conclusive evidence of such good faith.

8. You are hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other person or corporation, excepting only orders or process of courts of law and are hereby expressly authorized to comply with and obey orders, judgments or decrees of any court. In case you obey or comply with any such order, judgment or decree, you shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

9. You shall not be liable in any respect on account of the identity, authorities or rights of the parties executing or delivering or purporting to execute or deliver the Agreement or any documents or papers deposited or called for hereunder.

10. You shall not be liable for the expiration of any rights under any applicable state, federal or local statute of limitations or similar statute or regulation with respect to these Joint Escrow Instructions or any documents deposited with you.

11. You shall be entitled to employ such legal counsel and other experts as you may deem necessary properly to advise you in connection with your obligations hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefor.

12. Your responsibilities as Escrow Agent hereunder shall terminate if you shall cease to be an officer or agent of the Company or if you shall resign by written notice to each party. In the event of any such termination, the Company shall appoint a successor Escrow Agent.

13. If you reasonably require other or further instruments in connection with these Joint Escrow Instructions or obligations in respect hereto, the necessary parties hereto shall join in furnishing such instruments.

14. It is understood and agreed that should any dispute arise with respect to the delivery and/or ownership or right of possession of the securities held by you hereunder, you are authorized and directed to retain in your possession without liability to anyone all or any part of said securities until such disputes shall have been settled either by mutual written agreement of the parties concerned or by a final order, decree or judgment of a court of competent jurisdiction after the time for appeal has expired and no appeal has been perfected, but you shall be under no duty whatsoever to institute or defend any such proceedings.

15. Any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the United States Post Office, by registered or certified mail with postage and fees prepaid, addressed to each of the other parties thereunto entitled at such addresses as a party may designate by written notice to each of the other parties hereto.

16. By signing these Joint Escrow Instructions, you become a party hereto only for the purpose of said Joint Escrow Instructions; you do not become a party to the Agreement.

17. This instrument shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns.

18. These Joint Escrow Instructions shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding that body of law pertaining to conflicts of law.

(Signature Page Follows)

IN WITNESS WHEREOF, these Joint Escrow Instructions shall be effective as of the date first set forth above.

AIRXPANDERS, INC.

By: _____
Name: _____
Title: _____

PURCHASER:

By: _____
Name: _____

Address:

_____

_____

ESCROW AGENT:

By: _____
Name: _____
Title: _____

EXHIBIT C-4

CONSENT OF SPOUSE

I, _____, spouse of _____, have read and approve the Restricted Stock Purchase Agreement dated _____, ____, between my spouse and AirXpanders, Inc. In consideration of granting of the right to my spouse to purchase shares of AirXpanders, Inc. set forth in the Restricted Stock Purchase Agreement, I hereby appoint my spouse as my attorney-in-fact in respect to the exercise of any rights under the Agreement and agree to be bound by the provisions of the Restricted Stock Purchase Agreement insofar as I may have any rights in said Restricted Stock Purchase Agreement or any shares issued pursuant thereto under the community property laws or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the foregoing Restricted Stock Purchase Agreement.

Dated: _____, ____

_____

Signature of Spouse

Exhibit 10.3

AIRXPANDERS, INC.

2015 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: MAY 8, 2015
APPROVED BY THE STOCKHOLDERS: MAY 8, 2015
LISTING DATE/EFFECTIVE DATE: JUNE 12, 2015

1. GENERAL.

(a) Successor to and Continuation of Prior Plan.

(i) The Plan is the successor to and continuation of the AirXpanders' 2005 Equity Incentive Plan, as amended (the "***Prior Plan***"). From and after 12:01 p.m. Sydney time on the Effective Date, no additional stock awards will be granted under the Prior Plan. All stock awards granted under the Prior Plan remain subject to the terms of the Prior Plan. All Awards granted on or after 12:01 p.m. Sydney time on the Effective Date will be granted under the Plan.

(ii) From and after 12:01 p.m. Sydney time on the Effective Date, a number of shares of Common Stock equal to the total number of shares of Common Stock subject, at such time, to outstanding stock options granted under the Prior Plan that: (A) expire or terminate for any reason prior to exercise or settlement; (B) are forfeited or reacquired because of the failure to meet a contingency or condition required to vest such shares or are repurchased at the original issuance price; or (C) are otherwise reacquired or withheld (or not issued) to satisfy a tax withholding obligation in connection with an award (the "***Returning Shares***") will immediately be added to the Share Reserve (as further described in Section 3(a) below) as and when such shares become Returning Shares (up to the maximum number set forth in Section 3(a)), and become available for issuance pursuant to Stock Awards granted hereunder.

(b) Eligible Award Recipients. Employees, Directors and Consultants are eligible to receive Awards.

(c) Available Awards. The Plan provides for the grant of the following Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights (iv) Restricted Stock Awards, (v) Restricted Stock Unit Awards, (vi) Performance Stock Awards, (vii) Performance Cash Awards, and (viii) Other Stock Awards.

(d) Purpose. The Plan, through the granting of Awards, is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate, and provide a means by which the eligible recipients may benefit from increases in value of the Common Stock.

(e) Listing Rules. Notwithstanding any other provision of this Plan, while the Company is admitted to the official list of ASX, the provisions of this Plan are subject to the Listing Rules and this Plan is deemed to include any provisions necessary to comply with the Listing Rules.

2. ADMINISTRATION.

(a) Administration by Board. The Board will administer the Plan. The Board may delegate administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) Powers of Board. The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine: (A) who will be granted Awards; (B) when and how each Award will be granted; (C) what type of Award will be granted; (D) the provisions of each Award (which need not be identical), including when a person will be permitted to exercise or otherwise receive cash or Common Stock under the Award; (E) the number of shares of Common Stock subject to, or the cash value of, an Award; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for administration of the Plan and Awards. The Board, in the exercise of these powers, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement or in the written terms of a Performance Cash Award, in a manner and to the extent it will deem necessary or expedient to make the Plan or Award fully effective.

(iii) To settle all controversies regarding the Plan and Awards granted under it.

(iv) To accelerate, in whole or in part, the time at which an Award may be exercised or vest (or at which cash or shares of Common Stock may be issued).

(v) To suspend or terminate the Plan at any time. Except as otherwise provided in the Plan or an Award Agreement, suspension or termination of the Plan will not materially impair a Participant's rights under his or her then-outstanding Award without his or her written consent, except as provided in subsection (viii) below.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to bring the Plan or Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. If required by applicable law or listing requirements (including the Listing Rules), and except as provided in Section 9(a) relating to Capitalization Adjustments, the Company will seek stockholder approval of any amendment of the Plan that (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan, (D) materially extends the term of the Plan, (E) materially expands the types of Awards available for issuance under the Plan, or (F) requires approval under the Listing Rules. Except as otherwise provided in the Plan or an Award Agreement, no amendment of the Plan will materially impair that Participant's rights under an outstanding Award without his or her written consent.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of (A) Section 162(m) of the Code regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to Covered Employees, (B) Section 422 of the Code regarding "incentive stock options" or (C) Rule 16b-3.

(viii) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more outstanding Awards. Except with respect to amendments that disqualify or impair the status of an Incentive Stock Option or as otherwise provided in the Plan or an Award Agreement, no amendment of an outstanding Award will materially impair that Participant's rights under his or her outstanding Award without his or her written consent. To be clear, unless prohibited by applicable law (including the Listing Rules), the Board may amend the terms of an Award without the affected Participant's consent if necessary (A) to maintain the qualified status of the Award as an Incentive Stock Option, (B) to clarify the manner of exemption from, or to bring the Award into compliance with, Section 409A of the Code, or (C) to comply with other applicable laws or listing requirements.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit or facilitate participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States or allow Awards to qualify for special tax treatment in a foreign jurisdiction, and to amend any such procedures and sub-plans to continue to qualify for special or new tax treatment in a foreign jurisdiction; *provided*, that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement that are required for compliance with the laws of the relevant foreign jurisdiction and do not contravene the Listing Rules.

(xi) Subject to the Listing Rules, to effect, with the consent of any adversely affected Participant, (A) the reduction of the exercise, purchase or strike price of any outstanding Stock Award; (B) the cancellation of any outstanding Stock Award and the grant in substitution therefor of a new (1) Option or SAR, (2) Restricted Stock Award, (3) Restricted Stock Unit Award, (4) Other Stock Award, (5) cash and/or (6) other valuable consideration determined by the Board, in its sole discretion, with any such substituted award (x) covering the same or a different number of shares of Common Stock as the cancelled Stock Award and (y) granted under the Plan or another equity or compensatory plan of the Company; or (C) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee.

(i) General. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the

Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee, as applicable). Any delegation of administrative powers will be reflected in resolutions, not inconsistent with the provisions of the Plan, adopted from time to time by the Board or Committee (as applicable). The Committee may, at any time, abolish the subcommittee and/or revest in the Committee any powers delegated to the subcommittee. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(ii) Section 162(m) and Rule 16b-3 Compliance. The Committee may consist solely of two or more Outside Directors, in accordance with Section 162(m) of the Code, or solely of two or more Non-Employee Directors, in accordance with Rule 16b-3.

(d) Delegation to an Officer. The Board may delegate to one or more Officers the authority to do one or both of the following (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by applicable law, other Stock Awards) and, to the extent permitted by applicable law, the terms of such rights and options, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Employees; *provided*, *however*, that the Board resolutions regarding such delegation will specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officer and that such Officer may not grant a Stock Award to himself or herself. Any such Stock Awards will be granted on the form of Stock Award Agreement most recently approved for use by the Committee or the Board, unless otherwise provided in the resolutions approving the delegation authority. The Board may not delegate authority to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) to determine the Fair Market Value (as defined below).

(e) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve.

(i) Subject to Section 9(a) relating to Capitalization Adjustments, the "evergreen" provision in Section 3(a)(ii) and the Listing Rules, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards from and after the Effective Date (the "***Share Reserve***") will not exceed 1,500,000 shares, as increased from time to time by any Returning Shares in an amount not to exceed 4,099,835 shares.

(ii) In addition, the Share Reserve will automatically increase on January 1st of each year, for the period commencing on (and including) January 1, 2016 and ending on (and including) January 1, 2025, in an amount equal to 2.0% of the total number of shares of Capital Stock outstanding on December 31st of the preceding calendar year (and subject to a cap equal to 10% of the fully diluted number of shares of capital stock of the Company as of the same date). Notwithstanding the foregoing, the Board may act prior to January 1st of a given year to provide that there will be no January 1st increase in the Share Reserve for such year or that the increase in the Share Reserve for such year will be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence.

(iii) For clarity, the Share Reserve is a limitation on the number of shares of Common Stock that may be issued under the Plan. As a single share may be subject to grant more than once (e.g., if a share subject to a Stock Award is forfeited, it may be made subject to grant again as provided in Section 3(b) below), the Share Reserve is not a limit on the number of Stock Awards that can be granted.

(iv) Shares may be issued in connection with a merger or acquisition as permitted by NASDAQ Listing Rule 5635(c) or, if applicable, NYSE Listed Company Manual Section 303A.08, AMEX Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

(b) Reversion of Shares to the Share Reserve. If a Stock Award or any portion of a Stock Award (i) expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or (ii) is settled in cash (*i.e.*, the Participant receives cash rather than stock), such expiration, termination or settlement will not reduce (or otherwise offset) the number of shares of Common Stock that may be available for issuance under the Plan. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares that are forfeited or repurchased will revert to and again become available for issuance under the Plan. Any shares reacquired by the Company in satisfaction of tax withholding obligations on a Stock Award or as consideration for the exercise or purchase price of a Stock Award will again become available for issuance under the Plan.

(c) Incentive Stock Option Limit. Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options will be 12,000,000 shares of Common Stock.

(d) Section 162(m) Limitations. Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, at such time as the Company may be subject to the applicable provisions of Section 162(m) of the Code: (i) a maximum of 2,000,000 shares of Common Stock subject to Options, SARs and Other Stock Awards whose value is determined by reference to an increase over an exercise or strike price of at least 100% of the Fair Market Value on the date the Stock Award is granted may be granted to any one Participant during any one calendar year, (ii) a maximum of 2,000,000 shares of Common Stock subject to Performance Stock Awards may be granted to any one Participant during any one calendar year (whether the grant, vesting or exercise is contingent upon the attainment during the Performance Period of the Performance Goals) and (iii) a maximum of $2,000,000 may be granted as a Performance Cash Award to any one Participant during any one calendar year. If a Performance Stock Award is in the form of an Option, it will count only against the Performance Stock Award limit. If a Performance Stock Award could (but is not required to) be paid out in cash, it will count only against the Performance Stock Award limit.

(e) Source of Shares. Subject to the Listing Rules and any law, regulation or agreement regulating the Company, the stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

4. ELIGIBILITY.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; *provided, however*, that Stock Awards may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405 of the Securities Act, unless (i) the stock underlying such Stock Awards is treated as "service recipient stock" under Section 409A of the Code (for example, because the Stock Awards are granted pursuant to a corporate transaction such as a spin off transaction), (ii) the Company, in consultation with its legal counsel, has determined that such Stock Awards are otherwise exempt from Section 409A of the Code, or (iii) the Company, in consultation with its legal counsel, has determined that such Stock Awards comply with the distribution requirements of Section 409A of the Code.

(b) Ten Percent Stockholders. A Ten Percent Stockholder will not be granted an Incentive Stock Option unless the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five years from the date of grant.

(c) Consultants. A Consultant shall not be eligible for the grant of a Stock Award if, at the time of grant, either the offer or the sale of the Company's securities to such Consultant is not exempt under Rule 701 because of the nature of the services that the Consultant is providing to the Company, because the Consultant is not a natural person, or because of any other provision of Rule 701, unless the Company determines that such grant need not comply with the requirements of Rule 701 and will satisfy another exemption under the Securities Act as well as comply with the securities laws of all other relevant jurisdictions.

5. PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option or SAR will be in such form and will contain such terms and conditions as the Board deems appropriate. All Options will be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates will be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, or if an Option is designated as an Incentive Stock Option but some portion or all of the Option fails to qualify as an Incentive Stock Option under the applicable rules, then the Option (or portion thereof) will be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; *provided*, *however*, that each Award Agreement will conform to (through

incorporation of provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten years from the date of its grant or such shorter period specified in the Award Agreement.

(b) Exercise Price. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will be not less than 100% of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Award is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value of the Common Stock subject to the Award if such Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Section 409A of the Code and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

(c) Purchase Price for Options. The purchase price of Common Stock acquired pursuant to the exercise of an Option may be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board will have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to use a particular method of payment. Subject to the Listing Rules and any law, regulation or agreement regulating the Company, the permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if an Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided*, *however*, that the Company will accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued. Shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are reduced to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(v) in any other form of legal consideration that may be acceptable to the Board and specified in the applicable Award Agreement.

(d) Exercise and Payment of a SAR. To exercise any outstanding SAR, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such SAR. The appreciation distribution payable on the exercise of a SAR will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the SAR) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such SAR, and with respect to which the Participant is exercising the SAR on such date, over (B) the aggregate strike price of the number of Common Stock equivalents with respect to which the Participant is exercising the SAR on such date. The appreciation distribution may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Award Agreement evidencing such SAR.

(e) Transferability of Options and SARs. The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board will determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs will apply:

(i) Restrictions on Transfer. An Option or SAR will not be transferable except by will or by the laws of descent and distribution (or pursuant to subsections (ii) and (iii) below), and will be exercisable during the lifetime of the Participant only by the Participant. The Board may permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws. Except as explicitly provided in the Plan, neither an Option nor a SAR may be transferred for consideration.

(ii) Domestic Relations Orders. Subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to the terms of a domestic relations order or official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulations Section 1.421-1(b)(2). If an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Subject to the approval of the Board or a duly authorized Officer, a Participant may, by delivering written notice to the Company, in a form approved by the Company (or the designated broker), designate a third party who, on the death of the Participant, will thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, the executor or administrator of the Participant's estate will be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. However, the Company may prohibit designation of a beneficiary at any time, including due to any conclusion by the Company that such designation would be inconsistent with the provisions of applicable laws.

(f) Vesting Generally. The total number of shares of Common Stock subject to an Option or SAR may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of

Performance Goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) Termination of Continuous Service. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause and other than upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Award as of the date of termination of Continuous Service) within the period of time ending on the earlier of (i) the date which occurs three months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Award Agreement, which period will not be less than thirty (30) days if necessary to comply with applicable laws under such termination is for Cause) and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the applicable time frame, the Option or SAR will terminate.

(h) Extension of Termination Date. Except as otherwise provided in the applicable Award Agreement, if the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause and other than upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR will terminate on the earlier of (i) the expiration of a total period of three months (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, and (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement. In addition, unless otherwise provided in a Participant's Award Agreement, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR will terminate on the earlier of (i) the expiration of a period of days or months (that need not be consecutive) equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the sale of the Common Stock received upon exercise of the Option or SAR would not be in violation of the Company's insider trading policy, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement.

(i) Disability of Participant. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date which occurs 12 months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement, which period will be less than six (6) months if necessary to comply with applicable laws), and (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the applicable time frame, the Option or SAR (as applicable) will terminate.

(j) Death of Participant. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Award Agreement for exercisability after the termination of the Participant's Continuous Service for a reason other than death, then the Option or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date which occurs 18 months following the date of death (or such longer or shorter period specified in the Award Agreement, which period will be less than six (6) months if necessary to comply with applicable laws), and (ii) the expiration of the term of such Option or SAR as set forth in the Award Agreement. If, after the Participant's death, the Option or SAR is not exercised within the applicable time frame, the Option or SAR will terminate.

(k) Termination for Cause. Except as explicitly provided otherwise in a Participant's Award Agreement or other individual written agreement between the Company or any Affiliate and the Participant, if a Participant's Continuous Service is terminated for Cause, the Option or SAR will terminate immediately upon the date on which the event giving rise to the termination for Cause first occurred, and the Participant will be prohibited from exercising his or her Option or SAR from and after the date on which the event giving rise to the termination for Cause first occurred (or, if required by law, the date of termination of Continuous Service). If a Participant's Continuous Service is suspended pending an investigation of the existence of Cause, all of the Participant's rights under the Option or SAR will also be suspended during the investigation period.

(l) Non-Exempt Employees. If an Option or SAR is granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, the Option or SAR will not be first exercisable for any shares of Common Stock until at least six (6) months following the date of grant of the Option or SAR (although the Award may vest prior to such date). Consistent with the provisions of the Worker Economic Opportunity Act, (i) if such non-exempt Employee dies or suffers a Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement in another agreement between the Participant and the Company, or, if no such definition, in accordance with the Company's then current employment policies and guidelines), the vested portion of any Options and SARs may be exercised earlier than six (6) months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay. To the extent permitted and/or required for compliance with the Worker Economic Opportunity Act to ensure that any income derived by a non-exempt employee in connection with the exercise, vesting or issuance of any shares under any other Stock Award will be exempt from the employee's regular rate of pay, the provisions of this Section 5(l) will apply to all Stock Awards and are hereby incorporated by reference into such Stock Award Agreements

6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARS.

(a) Restricted Stock Awards. Each Restricted Stock Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. To the extent consistent with the Company's bylaws, at the Board's election, shares of Common Stock may be (x) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical. Each Restricted Stock Award Agreement will conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of legal consideration (including future services) that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) Vesting. Shares of Common Stock awarded under the Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) Termination of Participant's Continuous Service. If a Participant's Continuous Service terminates, the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant that have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) Transferability. Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement will be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board will determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(v) Dividends. A Restricted Stock Award Agreement may provide that any dividends paid on Restricted Stock will be subject to the same vesting and forfeiture restrictions as apply to the shares subject to the Restricted Stock Award to which they relate.

(b) Restricted Stock Unit Awards. Each Restricted Stock Unit Award Agreement will be in such form and will contain such terms and conditions as the Board will deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award Agreements need not be identical. Each Restricted Stock Unit Award Agreement will conform

to (through incorporation of the provisions hereof by reference in the Agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board, in its sole discretion, and permissible under applicable law.

(ii) Vesting. At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions on or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) Payment. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) Additional Restrictions. At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) Dividend Equivalents. Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all of the same terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

(vi) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(c) Performance Awards.

(i) Performance Stock Awards. A Performance Stock Award is a Stock Award (covering a number of shares not in excess of that set forth in Section 3(d) above) that is payable or that may be granted, may vest or may be exercised, contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Stock Award may, but need not, require the completion of a specified period of Continuous Service. The length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained will be conclusively determined by the Committee (or, if not required for compliance with Section 162(m)

of the Code, the Board), in its sole discretion. In addition, to the extent permitted by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

(ii) Performance Cash Awards. A Performance Cash Award is a cash award (for a dollar value not in excess of that set forth in Section 3(d) above) that is payable contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Cash Award may also require the completion of a specified period of Continuous Service. At the time of grant of a Performance Cash Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained will be conclusively determined by the Committee (or, if not required for compliance with Section 162(m) of the Code, the Board), in its sole discretion. The Board may specify the form of payment of Performance Cash Awards, which may be cash or other property, or may provide for a Participant to have the option for his or her Performance Cash Award, or such portion thereof as the Board may specify, to be paid in whole or in part in cash or other property.

(iii) Section 162(m) Compliance. Unless otherwise permitted in compliance with the requirements of Section 162(m) of the Code with respect to an Award intended to qualify as "performance-based compensation" thereunder, the Committee will establish the Performance Goals applicable to, and the formula for calculating the amount payable under, the Award no later than the earlier of (a) the date 90 days after the commencement of the applicable Performance Period, and (b) the date on which 25% of the Performance Period has elapsed, and in any event at a time when the achievement of the applicable Performance Goals remains substantially uncertain. Prior to the payment of any compensation under an Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code, the Committee will certify the extent to which any Performance Goals and any other material terms under such Award have been satisfied (other than in cases where such relate solely to the increase in the value of the Common Stock). Notwithstanding satisfaction of any completion of any Performance Goals, the number of shares of Common Stock, Options, cash or other benefits granted, issued, retainable and/or vested under an Award on account of satisfaction of such Performance Goals may be reduced by the Committee on the basis of such further considerations as the Committee, in its sole discretion, will determine.

(d) Other Stock Awards. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof, may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board will have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

7. COVENANTS OF THE COMPANY.

(a) Availability of Shares. The Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy then-outstanding Awards.

(b) Securities Law Compliance. The Company will seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided*, *however*, that this undertaking will not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained. A Participant will not be eligible for the grant of an Award or the subsequent issuance of cash or Common Stock pursuant to the Award if such grant or issuance would be in violation of any applicable securities law.

(c) No Obligation to Notify or Minimize Taxes. The Company will have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company will have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award.

8. MISCELLANEOUS.

(a) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Awards will constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Awards. Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action constituting the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the papering of the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

(c) Stockholder Rights. No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to an Award unless and until (i) such Participant has satisfied all requirements for exercise of, or the issuance of shares of Common Stock under, the Award pursuant to its terms, and (ii) the issuance of the Common Stock subject to such Award has been entered into the books and records of the Company.

(d) No Employment or Other Service Rights. Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award

granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or will affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without Cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) Change in Time Commitment. In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Award to the Participant, the Board has the right in its sole discretion to (x) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (y) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

(f) Incentive Stock Option Limitations. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds $100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with the rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(g) Investment Assurances. The Company may require a Participant, as a condition of receiving Stock Awards or exercising or acquiring Common Stock under any Award, (i) to give written assurances satisfactory to the Company as to the Participant's investor status, knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Award; and (ii) to give written assurances satisfactory to the Company in regard to the Participant's investor status and stating that the Participant is acquiring Common Stock subject to the Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. Subject to any applicable securities laws, the foregoing requirements, and any assurances given pursuant to such requirements, will be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may,

upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(h) Withholding Obligations. Unless prohibited by the terms of an Award Agreement or the Listing Rules, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; *provided*, *however*, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant, including proceeds from the sale of shares of Common Stock issued pursuant to a Stock Award; or (v) by such other method as may be set forth in the Award Agreement.

(i) Electronic Delivery. Any reference herein to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at www.asx.com.au or www.sec.gov (or any successor websites thereto) or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access).

(j) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code (to the extent applicable to a Participant). Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(k) Compliance with Section 409A. Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A of the Code, and, to the extent not so exempt, in compliance with Section 409A of the Code. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A

of the Code, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) will be issued or paid before the date that is six (6) months following the date of such Participant's "separation from service" or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A of the Code, and any amounts so deferred will be paid in a lump sum on the day after such six (6) month period elapses, with the balance paid thereafter on the original schedule.

(l) Clawback/Recovery. All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of an event constituting Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a right to resign for "good reason" or "constructive termination" (or similar term) under any agreement with the Company or an Affiliate.

9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment or other reorganization of capital, the rights of the holder of a Stock Award will be changed to the extent necessary to comply with the Listing Rules applying to a reorganization of capital at the time of the reorganization. The Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c), (iii) the class(es) and maximum number of securities that may be awarded to any person pursuant to Sections 3(d), and (iv) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board will make such adjustments, and its determination will be final, binding and conclusive.

(b) New Issues. No holder of Stock Awards is entitled to participate in any new issue of securities to the existing of holders of Common Stock (or CDIs) unless: (i) the holder has become entitled to exercise their right to receive Common Stock under the Plan, and (ii) the holder does exercise their right to receive Common Stock under the Plan before the record date for the determination of entitlements to the new issue of securities and participates as a result of being holder of Common Stock (or CDIs). The Company must give Participants, in accordance with the Listing Rules, notice of any new issue of securities before the record date for determining entitlements to the new issue.

(c) Pro Rata Issues and Bonus Issues. In the case of a pro-rata issue (other than a bonus issue), the exercise price of any Stock Award will be adjusted in accordance with the formula set out for making such an adjustment in the Listing Rules. In the case of a bonus issue, the number of securities over which a Stock Award is exercisable will, in accordance with the

Listing Rules, be increased by the number of securities which the Participant would have received if the Stock Award had been exercised before the record date for the bonus issue. Such adjustments shall be made by the Board, whose determination in that respect shall be final, binding and conclusive.

(d) Dissolution or Liquidation. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may, subject to the Listing Rules, be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service; *provided*, *however*, that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(e) Corporate Transaction. The following provisions will apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of a Stock Award or unless otherwise provided in the Listing Rules or by ASX. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board will take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting, in whole or in part, of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board determines (or, if the Board does not determine such a date, to the date that is five (5) days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction;

(iv) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(v) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration, if any, as the Board, in its sole discretion, may consider appropriate; and

(vi) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for a payment, in such form as may be determined by the Board, equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Stock Award immediately prior to the effective time of the Corporate Transaction, over (B) any exercise price payable by such holder in connection with such exercise.

(vii) The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants. The Board may take different actions with respect to the vested and unvested portions of a Stock Award.

(f) Change in Control. Subject to the Listing Rules, a Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration will occur.

10. TERMINATION OR SUSPENSION OF THE PLAN.

(a) The Board may suspend or terminate the Plan at any time. Unless terminated sooner by the Board, the Plan will automatically terminate on the day before the tenth (10th) anniversary of the earlier of (i) the date the Plan is adopted by the Board (the "***Adoption Date***"), or (ii) the date the Plan is approved by the stockholders of the Company. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

11. EXISTENCE OF THE PLAN; TIMING OF FIRST GRANT OR EXERCISE.

The Plan will come into existence on the Adoption Date; *provided*, *however*, that no Award may be granted prior to the Listing Date (that is, the Effective Date). In addition, no Stock Award will be exercised (or, in the case of a Restricted Stock Award, Restricted Stock Unit Award, Performance Stock Award, or Other Stock Award, will be granted) and no Performance Cash Award will be settled unless and until the Plan has been approved by the stockholders of the Company, which approval will be within 12 months after the Adoption Date.

12. CHOICE OF LAW.

The law of the State of Delaware will govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

13. DEFINITIONS. As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

(a) "***Affiliate***" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The Board will have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(b) "***ASX***" means ASX Limited ABN 98 008 624 691.

(c) "***Award***" means a Stock Award or a Performance Cash Award.

(d) "***Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award.

(e) "***Board***" means the Board of Directors of the Company.

(f) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Adoption Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large non-recurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(g) **"*Capital Stock*"** means each and every class of common stock of the Company, regardless of the number of votes per share.

(h) "***Cause***" will have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term or specifying the circumstances in which the employment can be terminated without notice and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any one or more of the following events: (i) the Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude; (ii) the Participant's attempted commission of or participation in a fraud or act of dishonesty against the Company that results in (or might have reasonably resulted in) material harm to the business of the Company; (iii) the Participant's intentional, material violation of any contract or agreement between the Participant and the Company or any statutory duty that the Participant owes to the Company; or (iv) the Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) the Participant's conduct that constitutes gross insubordination, incompetence or habitual neglect of duties and that results in (or might have reasonably resulted in) material harm to the business of the Company. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause will be made by the Company, in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or the Participant for any other purpose.

(i) "***CDIs****"* means CHESS Depositary Interests representing an interest in one-third of a share of Common Stock.

(j) "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control will not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company; (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities; or (C) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control will be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(iv) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the "***Incumbent Board***") cease for any reason to constitute at least a majority of the members of the Board; *provided*, *however*, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member will, for purposes of this Plan, be considered as a member of the Incumbent Board.

For purposes of determining voting power under the term Change in Control, voting power shall be calculated by assuming the conversion of all equity securities convertible (immediately or at some future time) into shares entitled to vote, but not assuming the exercise of any warrant or right to subscribe to or purchase those shares. In addition, (A) the term Change in Control will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant will supersede the foregoing definition with respect to Awards subject to such agreement; *provided*, *however*, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition will apply. If required for compliance with Section 409A of the Code, in no event will a Change in Control be deemed to have occurred if such transaction is not also a "change in the ownership or effective control of" the Company or "a change in the ownership of a substantial portion of the assets of" the Company as determined under Treasury Regulation Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder). The Board may, in its sole discretion and without a Participant's consent, amend the definition of "Change in Control" to conform to the definition of "Change in Control" under Section 409A of the Code, and the regulations thereunder.

(k) "***Code***" means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(l) "***Committee***" means a committee of one or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(m) "***Common Stock***" means, as of the Listing Date, the Class A Common Stock of the Company, having one vote per share.

(n) "***Company***" means AirXpanders, Inc., a Delaware corporation.

(o) "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a "Consultant" for purposes of the Plan.

(p) "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, will not terminate a Participant's Continuous Service; *provided*, *however*, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, in its sole discretion, such Participant's Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service will

be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law. In addition, to the extent required for exemption from or compliance with Section 409A of the Code, the determination of whether there has been a termination of Continuous Service will be made, and such term will be construed, in a manner that is consistent with the definition of "separation from service" as defined under Treasury Regulation Section 1.409A-1(h) (without regard to any alternative definition thereunder).

(q) "***Corporate Transaction***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) the consummation of a sale or other disposition of all or substantially all, as determined by the Board, in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) the consummation of a sale or other disposition of at least 90% of the outstanding securities of the Company;

(iii) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

To the extent required for compliance with Section 409A of the Code, in no event will an event be deemed a Corporate Transaction if such transaction is not also a "change in the ownership or effective control of" the Company or "a change in the ownership of a substantial portion of the assets of" the Company as determined under Treasury Regulation Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder).

(r) "***Covered Employee***" will have the meaning provided in Section 162(m)(3) of the Code.

(s) "***Director***" means a member of the Board.

(t) "***Disability***" means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(u) "***Effective Date***" means the Listing Date.

(v) "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an "Employee" for purposes of the Plan.

(w) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(x) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(y) "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company's then outstanding securities.

(z) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock (or CDIs representing the Common Stock) is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock will be, unless otherwise determined by the Board, determined by the closing sales price for such stock (or the equivalent number of CDIs) as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock or CDIs) on the date of determination, as reported in a source the Board deems reliable.

(ii) Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock (or CDIs) on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(aa) "***Incentive Stock Option***" means an option granted pursuant to Section 5 of the Plan that is intended to be, and qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(bb) "***Listing Date***" means the date that the Company is admitted to the official list of ASX.

(cc) "***Listing Rules***" means the Listing Rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

(dd) "***Non-Employee Director***" means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("***Regulation S-K***")), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(ee) "***Nonstatutory Stock Option***" means any option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

(ff) "***Officer***" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(gg) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(hh) "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

(ii) "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(jj) "***Other Stock Award***" means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(d).

(kk) "***Other Stock Award Agreement***" means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement will be subject to the terms and conditions of the Plan.

(ll) "***Outside Director***" means a Director who either (i) is not a current employee of the Company or an "affiliated corporation" (within the meaning of Treasury Regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company or an "affiliated corporation" who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year, has not been an officer of the Company or an "affiliated corporation," and does not receive remuneration from the Company or an "affiliated corporation," either directly or indirectly, in any capacity other than as a Director, or (ii) is otherwise considered an "outside director" for purposes of Section 162(m) of the Code.

(mm) "***Own,***" "***Owned,***" "***Owner,***" "***Ownership***" A person or Entity will be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(nn) "***Parent***" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.

(oo) "***Participant***" means a person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(pp) "***Performance Cash Award***" means an award of cash granted pursuant to the terms and conditions of Section 6(c)(ii).

(qq) "***Performance Criteria***" means the one or more criteria that the Committee (which to the extent that an Award is intended to comply with Section 162(m) of the Code shall consist solely of two or more Outside Directors in accordance with Section 162(m) of the Code) will select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that will be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Committee (which to the extent that an Award is intended to comply with Section 162(m) of the Code shall consist solely of two or more Outside Directors in accordance with Section 162(m) of the Code): (i) earnings (including earnings per share and net earnings); (ii) earnings before interest, taxes and depreciation; (iii) earnings before interest, taxes, depreciation and amortization; (iv) earnings before interest, taxes, depreciation, amortization and legal settlements; (v) earnings before interest, taxes, depreciation, amortization, legal settlements and other income (expense); (vi) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense) and stock-based compensation; (vii) earnings before interest, taxes, depreciation, amortization, legal settlements, other income (expense), stock-based compensation and changes in deferred revenue; (viii) total stockholder return; (ix) return on equity or average stockholder's equity; (x) return on assets, investment, or capital employed; (xi) stock price; (xii) margin (including gross margin); (xiii) income (before or after taxes); (xiv) operating income; (xv) operating income after taxes; (xvi) pre-tax profit; (xvii) operating cash flow; (xviii) sales or revenue targets; (xix) increases in revenue or product revenue; (xx) expenses and cost reduction goals; (xxi) improvement in or attainment of working capital levels; (xxii) economic value added (or an equivalent metric); (xxiii) market share; (xxiv) cash flow; (xxv) cash flow per share; (xxvi) share price performance; (xxvii) debt reduction; (xxviii) implementation or completion of projects or processes; (xxix) employee retention; (xxx) stockholders' equity; (xxxi) capital expenditures; (xxxii) debt levels; (xxxiii) operating profit or net operating profit; (xxxiv) workforce diversity; (xxxv) growth of net income or operating income; (xxxvi) billings; (xxxvii)

bookings; (xxxviii) initiation or completion of phases of clinical trials and/or studies by specified dates; (xxxix) patient enrollment rates, (xxxx) budget management; (xxxxi) regulatory body approval with respect to products, studies and/or trials; (xxxxii) commercial launch of products; and (xxxxiii) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board.

(rr) "***Performance Goals***" means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board will appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of any "extraordinary items" as determined under generally accepted accounting principles; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of common stock of the Company by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock based compensation and the award of bonuses under the Company's bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to expensed under generally accepted accounting principles; (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles; (12) to exclude the effect of any other unusual, non-recurring gain or loss or other extraordinary item; (13) to exclude the effects of the timing of acceptance for review and/or approval of submissions to the Food and Drug Administration or any other regulatory body and (14) to exclude the effects of entering into or achieving milestones involved in licensing joint ventures. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Stock Award Agreement or the written terms of a Performance Cash Award.

(ss) "***Performance Period***" means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to and the payment of a Stock Award or a Performance Cash Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

(tt) "***Performance Stock Award***" means a Stock Award granted under the terms and conditions of Section 6(c)(i).

(uu) "***Plan***" means this AirXpanders, Inc. 2015 Equity Incentive Plan.

(vv) "***Restricted Stock Award***" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

(ww) "***Restricted Stock Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(xx) "***Restricted Stock Unit Award***" means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(yy) "***Restricted Stock Unit Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement will be subject to the terms and conditions of the Plan.

(zz) "***Rule 16b-3***" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(aaa) "***Rule 701"*** means Rule 701 promulgated under the Securities Act.

(bbb) "***Securities Act***" means the Securities Act of 1933, as amended.

(ccc) "***Stock Appreciation Right***" or "***SAR***" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(ddd) "***Stock Appreciation Right Agreement***" means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement will be subject to the terms and conditions of the Plan.

(eee) "***Stock Award***" means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right, a Performance Stock Award or any Other Stock Award.

(fff) "***Stock Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement will be subject to the terms and conditions of the Plan.

(ggg) "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any

other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

(hhh) "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or any Affiliate.

AIRXPANDERS, INC.

2015 EQUITY INCENTIVE PLAN

AUSTRALIAN SUB-PLAN

The following terms and conditions (the "***Australian Sub-Plan***") shall apply to the Award of Options granted to Participants under the AirXpanders, Inc. 2015 Equity Incentive Plan (the "***Plan***") who are resident in Australia. This Australian Sub-Plan shall be deemed a part of the Plan and may be amended in accordance with Section 2(b) of the Plan or terminated by the Board in accordance with Section 10 of the Plan. In the event of a conflict, whether explicit or implied, between the provisions of the Plan and the Australian Sub-Plan, the latter shall govern and prevail.

1 GENERAL.

(a) **Eligibility.** Awards of Options may be granted under the Plan to Residents of Australia that are Employees of the Company or a Qualifying Subsidiary.

(b) **Governing rules.** Awards under the Australian Sub Plan shall be governed by the Plan, as modified by this Australian Sub Plan.

(c) **Inapplicable Plan conditions.** Sections 5(l) and 8(k) of the Plan shall not apply to Awards under the Australian Sub Plan.

(d) **Application of Subdivision 83A-C.** Subject to the requirements of the ITAA 1997, Subdivision 83A-C of the ITAA 1997 applies to Awards under the Australian Sub Plan.

(e) **Options apply to Ordinary Shares**. For the avoidance of doubt, Options may only be granted under the Australian Sub Plan in respect of Common Stock of the Company or CDIs relating to Common Stock.

(f) **Transferability of Options.** The Board will only exercise its powers under Section 5(e) of the Plan to permit transfer of Options to which this Australian Sub-Plan applies in exceptional circumstances or cases of financial hardship.

2 DEFINITIONS.

(a) Capitalized terms contained herein shall have the same meanings given to them in the Plan (or any applicable addendum) (where applicable) or as indicated in Section 2(b) below.

(b) In this Australian Sub Plan, the following definitions will apply to the capitalized terms indicated below.

(i) ***"ITAA 1936"*** means the *Income Tax Assessment Act 1936* (C'wth of Aust.).

(ii) ***"ITAA 1997"*** means the *Income Tax Assessment Act 1997* (C'wth of Aust.).

(iii) ***"Qualifying Subsidiary"*** means a Subsidiary that is a subsidiary as defined in s.995-1 of the ITAA 1997.

(iv) ***"Resident of Australia"*** means a person that is a resident of Australia within the meaning given in section 6 of the ITAA 1936 at the time an Award is granted.

Exhibit 10.4

AIRXPANDERS, INC.

2015 EQUITY INCENTIVE PLAN

OPTION AGREEMENT
(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)

Pursuant to your Stock Option Grant Notice ("***Grant Notice***") and this Option Agreement, **AIRXPANDERS, INC.** (the "***Company***") has granted you an option under its 2015 Equity Incentive Plan (the "***Plan***") to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. The option is granted to you effective as of the date of grant set forth in the Grant Notice (the "***Date of Grant***"). If there is any conflict between the terms in this Option Agreement and the Plan, the terms of the Plan will control. Capitalized terms not explicitly defined in this Option Agreement or in the Grant Notice but defined in the Plan will have the same definitions as in the Plan.

The details of your option, in addition to those set forth in the Grant Notice and the Plan, are as follows:

1. VESTING. Your option will vest as provided in your Grant Notice. Vesting will cease upon the termination of your Continuous Service.

2. NUMBER OF SHARES AND EXERCISE PRICE. The number of shares of Common Stock subject to your option and your exercise price per share in your Grant Notice will be adjusted for Capitalization Adjustments.

3. EXERCISE RESTRICTION FOR NON-EXEMPT EMPLOYEES. If you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (that is, a "***Non-Exempt Employee***"), and except as otherwise provided in the Plan, you may not exercise your option until you have completed at least six (6) months of Continuous Service measured from the Date of Grant, even if you have already been an employee for more than six (6) months. Consistent with the provisions of the Worker Economic Opportunity Act, you may exercise your option as to any vested portion prior to such six (6) month anniversary in the case of (i) your death or disability, (ii) a Corporate Transaction in which your option is not assumed, continued or substituted, (iii) a Change in Control or (iv) your termination of Continuous Service on your "retirement" (as defined in the Company's benefit plans).

4. METHOD OF PAYMENT. You must pay the full amount of the exercise price for the shares you wish to exercise. You may pay the exercise price in cash or by check, bank draft or money order payable to the Company or in any other manner ***permitted by your Grant Notice,*** which may include one or more of the following:

(a) Provided that at the time of exercise the Common Stock is publicly traded, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds. This manner of payment is also known as a "broker-assisted exercise", "same day sale", or "sell to cover".

(b) Provided that at the time of exercise the Common Stock is publicly traded, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time you exercise your option, will include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. You may not exercise your option by delivery to the Company of Common Stock if doing so would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

(c) If this option is a Nonstatutory Stock Option, subject to the consent of the Company at the time of exercise, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price. You must pay any remaining balance of the aggregate exercise price not satisfied by the "net exercise" in cash or other permitted form of payment. Shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter if those shares (i) are used to pay the exercise price pursuant to the "net exercise," (ii) are delivered to you as a result of such exercise, and (iii) are withheld to satisfy your tax withholding obligations.

5. WHOLE SHARES. You may exercise your option only for whole shares of Common Stock.

6. SECURITIES LAW COMPLIANCE. In no event may you exercise your option unless the shares of Common Stock issuable upon exercise are then registered under the Securities Act or, if not registered, the Company has determined that your exercise and the issuance of the shares would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with all other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations (including any restrictions on exercise required for compliance with Treas. Reg. 1.401(k)-1(d)(3), if applicable).

7. TERM. You may not exercise your option before the Date of Grant or after the expiration of the option's term. The term of your option expires, subject to the provisions of Section 5(h) of the Plan, upon the earliest of the following:

(a) if your Continuous Service is terminated for Cause, then immediately upon the date on which the event giving rise to the termination for Cause first occurred;

(b) three (3) months after the termination of your Continuous Service for any reason other than Cause, your Disability or your death (except as otherwise provided in Section 8(d) below); *provided, however,* that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in the section above relating to "Securities Law Compliance," your option will not expire until the earlier of the Expiration Date or until it has been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service; *provided further,* that if (i) you are a Non-Exempt Employee, (ii) your Continuous Service terminates within six (6) months after the Date of Grant, and (iii) you have vested in a portion of your option at the time of your termination of Continuous Service, your option will not expire until the earlier of (x) the later of (A) the date that is seven (7) months after the Date of Grant, and (B) the date that is three (3) months after the termination of your Continuous Service, and (y) the Expiration Date;

(c) twelve (12) months after the termination of your Continuous Service due to your Disability (except as otherwise provided in Section 8(d)) below;

(d) eighteen (18) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates for any reason other than Cause;

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the tenth (10th) anniversary of the Date of Grant.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the Date of Grant and ending on the day three (3) months before the date of your option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three (3) months after the date your employment with the Company or an Affiliate terminates.

8. EXERCISE.

(a) You may exercise the vested portion of your option (and the unvested portion of your option if your Grant Notice so permits) during its term by (i) delivering a Notice of Exercise (in a form designated by the Company) or completing such other documents and/or procedures designated by the Company for exercise and (ii) paying the exercise price and any applicable withholding taxes to the Company's Secretary, stock plan administrator, or such other person as the Company may designate, together with such additional documents as the Company may then require.

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

(c) If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within fifteen (15) days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two (2) years after the Date of Grant or within one (1) year after such shares of Common Stock are transferred upon exercise of your option.

(d) By exercising your option you agree that you will not sell, dispose of, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale with respect to any shares of Common Stock or other securities of the Company held by you, for a period of one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act or such longer period as the underwriters or the Company will request to facilitate compliance with FINRA Rule 2711 or NYSE Member Rule 472 or any successor or similar rules or regulation (the "***Lock-Up Period***"); *provided, however*, that nothing contained in this section will prevent the exercise of a repurchase option,

if any, in favor of the Company during the Lock-Up Period. You further agree to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriters that are consistent with the foregoing or that are necessary to give further effect thereto. In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to your shares of Common Stock until the end of such period. You also agree that any transferee of any shares of Common Stock (or other securities) of the Company held by you will be bound by this Section 9(d). The underwriters of the Company's stock are intended third party beneficiaries of this Section 9(d) and will have the right, power and authority to enforce the provisions hereof as though they were a party hereto.

9. TRANSFERABILITY. Except as otherwise provided in this Section 10, your option is not transferable, except by will or by the laws of descent and distribution, and is exercisable during your life only by you.

(a) Certain Trusts. Upon receiving written permission from the Board or its duly authorized designee, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust. You and the trustee must enter into transfer and other agreements required by the Company.

(b) Domestic Relations Orders. Upon receiving written permission from the Board or its duly authorized designee, and provided that you and the designated transferee enter into transfer and other agreements required by the Company, you may transfer your option pursuant to the terms of a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted by Treasury Regulation 1.421-1(b)(2) that contains the information required by the Company to effectuate the transfer. You are encouraged to discuss the proposed terms of any division of this option with the Company prior to finalizing the domestic relations order or marital settlement agreement to help ensure the required information is contained within the domestic relations order or marital settlement agreement. If this option is an Incentive Stock Option, this option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(c) Beneficiary Designation. Upon receiving written permission from the Board or its duly authorized designee, you may, by delivering written notice to the Company, in a form approved by the Company and any broker designated by the Company to handle option exercises, designate a third party who, on your death, will thereafter be entitled to exercise this option and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, your executor or administrator of your estate will be entitled to exercise this option and receive, on behalf of your estate, the Common Stock or other consideration resulting from such exercise.

10. OPTION NOT A SERVICE CONTRACT. Your option is not an employment or service contract, and nothing in your option will be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option will obligate the Company or an Affiliate, their respective stockholders, boards of directors, officers or employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

11. WITHHOLDING OBLIGATIONS.

(a) At the time you exercise your option, in whole or in part, and at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "same day sale" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

(b) If this option is a Nonstatutory Stock Option, then upon your request and subject to approval by the Company, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company will have no obligation to issue a certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein, if applicable, unless such obligations are satisfied.

12. TAX CONSEQUENCES. You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You will not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the "fair market value" per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option. Because the Common Stock is not traded on an established securities market, the Fair Market Value is determined by the Board, perhaps in consultation with an independent valuation firm retained by the Company. You acknowledge that there is no guarantee that the Internal Revenue Service will agree with the valuation as determined by the Board, and you will not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that the valuation determined by the Board is less than the "fair market value" as subsequently determined by the Internal Revenue Service.

13. NOTICES. Any notices provided for in your option or the Plan will be given in writing (including electronically) and will be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company. The Company may, in its sole discretion, decide to deliver any documents related to participation in the Plan and this option by electronic means or to request your consent to participate in the Plan by electronic means. By accepting this option, you consent to receive such documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

14. GOVERNING PLAN DOCUMENT. Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. If there is any conflict between the provisions of your option and those of the Plan, the provisions of the Plan will control.

Exhibit 10.5

AirXpanders

September 28, 2010

Scott Dodson
[Private Address]
Re: Employment Terms

Dear Scott:

AirXpanders, Inc. (the "Company") is pleased to offer you the position of President & Chief Executive Officer on the following terms.

You will report to the Company's Board of Directors (the "Board"). Your home office will be at our facility located in Palo Alto, CA.

The Company's regular business hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday. As an exempt salaried employee, you may be expected to work additional hours, including evenings and weekends, as required to perform your job duties.

Your base salary will be at the annualized rate of $310,000 less required and designated payroll deductions and withholdings, and will be paid with our regular payroll. In the event the Company institutes an executive management bonus program covering your position, you will be eligible to participate in that program. The Company does not have such a program at this time. You will be eligible for our standard Company benefits which are offered to all employees, including PTO, health insurance and the like. The Company may change your compensation and benefits from time to time in its discretion.

Subject to approval by the Company' s Board of Directors (the "Board"), and pursuant to the Company's current equity incentive plan (the "Plan"), the Company shall grant you an option to purchase such number of shares of the Company's common stock so that your ownership stake will amount to five-and-a half percent (5.5%) of the Company's outstanding fully diluted capitalization as of your date of hire. The option shall be at an exercise price equal to the stock's fair market value per share, as determined by the Board as of the date of the grant (the "Option''). The Option will be subject to the terms and conditions of the Plan, and the corresponding grant notice and stock option agreement Your Option will have a four-year vesting schedule, under which 25 percent of the Option shares will vest after twelve months of employment, with the remaining shares vesting monthly thereafter, until either the Option is fully vested or your employment ends, whichever occurs first.

Notwithstanding the preceding, effective upon a Change of Control, your unvested shares shall vest as follows:

(i) Fifty (50) percent of your then unvested shares shall immediately vest and;

(ii) The remainder of your unvested shares shall vest over the succeeding twelve (12) months based on your continued employment unless you are terminated before the end of those twelve months other than for Cause, in which case all unvested shares shall vest immediately.

If your position is terminated by the Company other than for Cause, upon execution of a release of claims in a form reasonably acceptable to the Company, you shall receive six (6) months of your then current base salary, payable at the Company's regular payroll periods. In addition, the Company shall make payments on your behalf for continuation of premiums for health insurance under Federal or State COBRA programs.

The term "Change of Control" shall mean (1) a sale of all or substantially all of the Company's assets, (2) any merger, consolidation or other business combination transaction of the Company with or into another corporation, entity or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the surviving entity) outstanding immediately after such transaction or (3) the direct or indirect acquisition (including by way of a tender or exchange offer) by any person, or persons acting as a group, of beneficial ownership or a right to acquire beneficial ownership of shares representing a majority of the voting power of the then outstanding shares of capital stock of the Company other than the sale of equity securities sold for the purpose of raising capital.

The term "Cause" shall mean if your employment is terminated by the Company for any of the following reasons: (1) willful failure to perform your duties and responsibilities to the Company or a deliberate violation of a Company policy, (2) commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company, (3) unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom you owe an obligation of nondisclosure as a result of your relationship with the Company or (4) willful breach of any of your obligations under any written agreement or covenant with the Company.

As a Company employee, you will be expected to comply with Company policies and procedures. As a condition of employment, you must read, sign and comply with the Company's Employee Proprietary Information and Inventions Agreement ("Proprietary Information and Inventions Agreement"), which (among other provisions) prohibits any unauthorized use or disclosure of Company proprietary, confidential or trade secret information.

In your work for the Company, you will be prohibited from using or disclosing any confidential, proprietary or trade secret information of any former employer or other person to whom you have an obligation of confidentiality. Rather, you will be required to use only information that is generally known and used by persons with training and experience comparable to your own, is common knowledge in the industry or otherwise legally in the public domain, or is otherwise provided or developed by the Company. You agree that you will not bring onto Company premises or use in your work for the Company any unpublished documents or property belonging to any former employer or third party that you are not authorized to use

and disclose. You represent further that you have disclosed to the Company any contract you have signed that might restrict your activities on behalf of the Company. By accepting employment with the Company, you are representing that you will be able to perform your job duties within these parameters.

Your employment relationship with the Company will be at will. You may terminate your employment with the Company at any time and for any reason whatsoever simply by notifying the Company. Likewise, the Company may terminate your employment at any time, with or without cause or advance notice. Your employment at-will status can only be changed in a written agreement signed by you and a duly authorized officer of the Company.

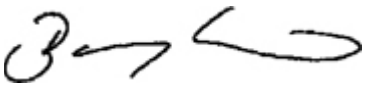
As required by law, this offer is subject to satisfactory proof of your identity and right to work in the United States.

This letter, together with your Proprietary Information and Inventions Agreement, will form the complete and exclusive statement of your employment agreement with the Company. The terms in this letter supersede any other agreements, promises or representations made to you by anyone, whether oral or written (other than the Proprietary Information and Inventions Agreement), regarding the subject matters hereof. This letter agreement cannot be changed except in a written agreement signed by you and a duly authorized officer of the Company.

Please sign and date this letter and the enclosed Company Proprietary Information and Inventions Agreement, and return them to me by September 30th, 2010, if you decide to accept employment with the Company under the terms described above. This offer will otherwise expire on that date. If you accept our offer, you will start your employment on or around October 1st, 2010 or such date as agreed between you and the Board.

We look forward to your favorable reply and to a productive and enjoyable working relationship.

Sincerely,



Barry Cheskin
Chairman of the Board

Accepted:

Scott Dodson

9-28-2010
Date

Attachment: EMPLOYEE PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT

Exhibit 10.6

May 2, 2016

Scott K. Murcray, CPA

Dear Scott:

I am pleased to offer you a position with AirXpanders, Inc. (the "Company"), as our Chief Financial Officer and Chief Operating Officer (CFO/COO), reporting to me, the President and CEO. As a CFO/COO, you will be expected to perform the duties typical for such a position, as assigned by your supervisor. In addition, you will devote your full energies, abilities and productive business time to the performance of your job for the Company and will not engage in any activity that would in any way interfere or conflict with the full performance of any of your duties for the Company.

Salary and Benefits.

If you decide to join us, you will receive a salary paid at the annual rate of $265,000, less payroll deductions and withholdings, which will be paid semi-monthly in accordance with the Company's normal payroll procedures. Your salary will be reviewed annually in accordance with the Company's normal review process.

In addition, in the event that the Company adopts and implements a written executive cash bonus plan, you will be eligible to participate in such plan, subject to the terms and conditions of such plan and any written notice to you.

As an employee, you will be eligible to receive health care benefits (100% employee/ 50% dependents) for medical, dental and vision. Other Company benefits include Life Insurance and a 401k plan for employee-based contributions. You will be entitled to accrue Personal Time Off (PTO) at the rate of fifteen (20) days per year (1.66 days per month), in accordance with the Company's PTO policy. You should note that the Company may modify job titles, salaries and benefits from time to time as it deems necessary.

Equity Compensation.

In addition, if you decide to join the Company, the Company will recommend to its Board of Directors (the "Board") to grant you an option to purchase 240,000 shares of the Company's Common Stock at a price per share equal to the fair market value per share of the Common Stock on the date of grant, as determined by the Board. If granted, 25% of the shares subject to the option shall vest twelve (12) months after the vesting commencement date, subject to your continuing employment with the Company. No shares shall vest before the vesting commencement date. The remaining shares shall vest monthly thereafter over the next 36 months in equal monthly amounts subject to your continuing employment with the Company on each such vesting date. This option grant, including its vesting requirements, shall be subject to the terms and conditions of the Company's Stock Option Plan and Stock Option Agreement. No right to any stock is earned or accrued until such time that vesting occurs, nor does the grant confer any right to continued vesting or employment.

Protection of Third Party Information / Compliance with Confidentiality Agreement and Company Policies.

We ask that, if you have not already done so, you disclose to the Company any and all agreements relating to your prior employment that may affect your eligibility to be employed by the Company or restrict your activities on behalf of the Company. By signing below, you represent that you have not signed any agreements that will prevent you from performing the duties of your position. Moreover, you agree that, during the term of your employment with the Company, you will not engage in any other employment, occupation, consulting or other business activity directly related to the business in which the Company is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to the Company.

In your work for the Company, you will be expected not to make any unauthorized use or disclosure of any confidential or proprietary information, including trade secrets, of any former employer or other third party to whom you have contractual obligations to protect such information. Rather, you will be expected to use only that information which is generally known and used by persons with training and experience comparable to your own, which is common knowledge in the industry or otherwise legally in the public domain, or which is provided or developed by the Company. You represent and agree that you are not in unauthorized possession of, and will not to bring onto Company premises, any former employer or third party confidential information or property.

As a Company employee, you will be expected to abide by the Company's rules, policies and standards (including, but not limited to, the Company's Employee Handbook), as adopted or modified by the Company from time to time. As a condition of your employment, you are also required to sign and comply with the Employee Confidential Information and Invention Assignment Agreement which requires, among other provisions, the assignment of patent rights to any invention made during your employment at the Company, and non-disclosure of Company proprietary information (the "Agreement"). Please note that we must receive your signed Agreement on or before your first day of employment.

At-Will Employment; Severance.

At-Will Employment. The Company is excited about your joining and looks forward to a beneficial and productive relationship. Nevertheless, you should be aware that your employment with the Company is for no specified period and constitutes at-will employment. As a result, you are free to resign at any time, for any reason or for no reason. Similarly, the Company is free to terminate its employment relationship with you at any time, with or without Cause (as defined below), and with or without advance notice. We request that, in the event of your employment resignation, you give the Company at least two weeks' notice.

Termination without Cause. If, at any time, the Company terminates your employment without Cause (and other than as a result of your death or disability), and provided such termination constitutes a Separation from Service (as defined below) (such termination, a "Qualifying Termination"), then subject to your signing and delivering to the Company an effective Release and your continued compliance with the terms of the Agreement, the Company will provide you with the following severance benefits:

(a) **Cash Severance.** The Company will pay you, as cash severance, six (6) months of your base salary in effect as of your Separation from Service date, less standard payroll deductions and tax withholdings (the "Cash Severance"). The Severance will be paid in installments in the form of continuation of your base salary payments, paid on the Company's ordinary payroll dates, commencing on the Company's first regular payroll date that is more than sixty (60) days following your Separation from Service date, and shall be for any accrued base salary for the sixty (60)-day period plus the period from the sixtieth (60th) day until the regular payroll date, if applicable, and all salary continuation payments thereafter, if any, shall be made on the Company's regular payroll dates.

(b) **COBRA Severance.** The Company will continue to pay the cost of your health care coverage in effect at the time of your Separation from Service for a maximum of six (6) months, either under the Company's regular health plan (if permitted), or by paying your COBRA premiums (the "COBRA Severance"). The Company's obligation to pay the COBRA Severance on your behalf will cease if you obtain health care coverage from another source (e.g., a new employer or spouse's benefit plan), unless otherwise prohibited by applicable law. You must notify the Company within two (2) weeks if you obtain coverage from a new source. This payment of COBRA Severance by the Company would not expand or extend the maximum period of COBRA coverage to which you would otherwise be entitled under applicable law. Notwithstanding the above, if the Company determines in its sole discretion that it cannot provide the foregoing, COBRA Severance without potentially violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), the Company shall in lieu thereof provide to you a taxable monthly payment in an amount equal to the monthly COBRA premium that you would be required to pay to continue your group health coverage in effect on the date of your termination (each payment, a "Special Payment") (which amount shall be based on the premium for the first month of COBRA coverage), which Special Payments shall be made on the last day of each month regardless of whether you elect COBRA continuation coverage and shall end on the earlier of (x) the date upon which you obtain other coverage or (y) the last day of the sixth (6th) calendar month following your Separation from Service date. The first installment of any Special Payment, including any installments that you would have otherwise received earlier, will be made in the month that the Release becomes effective, but, if the Release Period spans two (2) calendar years, you will not be paid any Special Payments until the second calendar year.

Termination without Cause in Connection with Change of Control. In the event of a Qualifying Termination that occurs in connection with or within twelve (12) months following the effective closing date of a Change in Control (as defined below), then subject to your signing and delivering to the Company an effective Release (as defined below) and your continued compliance with the terms of this offer letter agreement and the Agreement (as defined below), as an additional severance benefit the Company shall accelerate the vesting of any then-unvested shares subject to the Option such that one hundred percent (100%) of such shares shall be deemed immediately vested and exercisable as of your Separation from Service date (the "Accelerated Vesting").

Resignation; Termination for Cause; Death or Disability. If, at any time, you resign your employment, or the Company terminates your employment for Cause, or if either party terminates your employment as a result of your death or disability, you will receive your base salary accrued through your last day of employment, as well as any unused vacation (if applicable) accrued through your last day of employment. Under these circumstances, you will not be entitled to any other form of compensation from the Company, including any Cash Severance, COBRA Severance or Accelerated Vesting, other than your rights to the vested portion of your Option and any other rights to which you are entitled under the Company's benefit programs.

Conditions to Receipt of Cash Severance, COBRA Severance and Accelerated Vesting. Prior to and as a condition to your receipt of the Cash Severance, COBRA Severance or Accelerated Vesting described above, you shall execute and deliver to the Company an effective release of claims in favor of and in a form acceptable to the Company (the "Release") within the timeframe set forth therein, but not later than forty-five (45) days following your Separation from Service date, and allow the Release to become effective according to its terms (by not invoking any legal right to revoke it) within any applicable time period set forth therein (such latest permitted effective date, the "Release Deadline").

Definitions.

For purposes of this Agreement, the following terms shall have the following meanings:

"Cause" for termination will mean your: (a) commission or conviction (including a guilty plea or plea of nolo contendere) of any felony or any other crime involving fraud, dishonesty or moral turpitude; (b) your commission or attempted commission of or participation in a fraud or act of dishonesty or misrepresentation against the Company; (c) material breach of your duties to the Company; (d) intentional damage to any property of the Company; (e) misconduct, or other violation of Company policy that causes harm; (f) your material violation of any written and fully executed contract or agreement between you and the Company, including without limitation, material breach of your Confidentiality Agreement, or of any Company policy, or of any statutory duty you owe to the Company; or (g) conduct by you which in the good faith and reasonable determination of the Company demonstrates gross unfitness to serve. The determination that a termination is for Cause shall be made by the Company in its sole discretion.

"Change of Control" shall mean: (a) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, other than any such consolidation, merger or reorganization in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, continue to hold a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization; (b) any transaction or series of related transactions to which the Company is a party in which in excess of fifty percent (50%) of the Company's voting power is transferred; provided that the foregoing shall not include any transaction or series of transactions principally for bona fide equity financing purposes in which cash is received by the Company or indebtedness of the Company is cancelled or converted or a combination thereof; or (c) a sale, lease, exclusive license or other disposition of all or substantially all of the assets of the Company.

"Separation from Service" shall mean a "separation from service" as such term is defined in Treasury Regulation Section 1.409A-1(h).

Compliance with Section 409A.

It is intended that the Cash Severance, COBRA Severance and Accelerated Vesting set forth in this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Section 409A of the Internal Revenue Code of 1986, as amended, (the "Code") (Section 409A, together with any state law of similar effect, "Section 409A") provided under Treasury Regulations 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9). For purposes of Section 409A (including, without limitation, for purposes of Treasury Regulations 1.409A-2(b)(2)(iii)), your right to receive any installment payments under this Agreement (whether severance payments, reimbursements or otherwise) shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment hereunder shall at all times be considered a separate and distinct payment. Notwithstanding any provision to the contrary in this Agreement, if the Company (or, if applicable, the successor entity thereto) determines that the Cash Severance, COBRA Severance or Accelerated Vesting constitute "deferred compensation" under Section 409A and you are, on the date of your Separation from Service, a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A(a)(2)(B)(i) of the Code (a "Specified Employee"), then, solely to the extent necessary to avoid the incurrence of adverse personal tax consequences under Section 409A, the timing of the Cash Severance, COBRA Severance and Accelerated Vesting shall be delayed until the earliest of: (i) the date that is six (6) months and one (1) day after your Separation from Service date, (ii) the date of your death, or (iii) such earlier date as permitted under Section 409A without the imposition of adverse taxation. Upon the first business day following the expiration of such applicable Code Section 409A(a)(2)(B)(i) period, all payments or benefits deferred pursuant to this Section 17 shall be paid in a lump sum or provided in full by the Company (or the successor entity thereto, as applicable), and any remaining payments due shall be paid as otherwise provided herein. No interest shall be due on any amounts so deferred. If the Cash Severance, COBRA Severance and Accelerated Vesting benefits are not covered by one or more exemptions from the application of Section 409A and the Release could become effective in the calendar year following the calendar year in which you have a Separation from Service, the Release will not be deemed effective any earlier than the Release Deadline. The Cash Severance, COBRA Severance and Accelerated Vesting benefits are intended to qualify for an exemption from application of Section 409A or comply with its requirements to the extent necessary to avoid adverse personal tax consequences under Section 409A, and any ambiguities herein shall be interpreted accordingly.

Section 280G; Parachute Payments.

(a) If any payment or benefit you will or may receive from the Company or otherwise (a "280G Payment") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then any such 280G Payment provided pursuant to this Agreement (a "Payment") shall be equal to the Reduced Amount. The "Reduced Amount" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount (i.e., the amount

determined by clause (x) or by clause (y)), after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and the Reduced Amount is determined pursuant to clause (x) of the preceding sentence, the reduction shall occur in the manner (the "Reduction Method") that results in the greatest economic benefit for you. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the "Pro Rata Reduction Method").

(b) Notwithstanding any provision of subsection (a) above to the contrary, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A that would not otherwise be subject to taxes pursuant to Section 409A, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A as follows: (A) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for you as determined on an after-tax basis; (B) as a second priority, Payments that are contingent on future events (e.g., being terminated without Cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (C) as a third priority, Payments that are "deferred compensation" within the meaning of Section 409A shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A.

(c) Unless you and the Company agree on an alternative accounting firm or law firm, the accounting firm engaged by the Company for general tax compliance purposes as of the day prior to the effective date of the Change in Control transaction shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the change in control transaction, the Company shall appoint a nationally recognized accounting or law firm to make the determinations required by this Section 18. The Company shall bear all expenses with respect to the determinations by such accounting or law firm required to be made hereunder. The Company shall use commercially reasonable efforts to cause the accounting or law firm engaged to make the determinations hereunder to provide its calculations, together with detailed supporting documentation, to you and the Company within fifteen (15) calendar days after the date on which your right to a 280G Payment becomes reasonably likely to occur (if requested at that time by you or the Company) or such other time as requested by you or the Company.

(d) If you receive a Payment for which the Reduced Amount was determined pursuant to clause (x) of Section 18(a) and the Internal Revenue Service determines thereafter that some portion of the Payment is subject to the Excise Tax, Executive agrees to promptly return to the Company a sufficient amount of the Payment (after reduction pursuant to clause (x) of Section 18(a)) so that no portion of the remaining Payment is subject to the Excise Tax. For the avoidance of doubt, if the Reduced Amount was determined pursuant to clause (y) of Section 18(a), you shall have no obligation to return any portion of the Payment pursuant to the preceding sentence.

Dispute Resolution.

To ensure the timely and economical resolution of disputes that may arise in connection with your employment with the Company, you and the Company agree that any and all disputes, claims, or causes of action arising from or relating to the enforcement, breach, performance, negotiation, execution, or interpretation of this Agreement, or your employment, or the termination of your employment, including but not limited to all statutory claims, shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. §1-16, and to the fullest extent permitted by law, by final, binding and confidential arbitration by a single arbitrator conducted in San Francisco, California, by Judicial Arbitration and Mediation Services Inc. ("**JAMS**") under the then applicable JAMS rules, which can be found at the following web address: http://www.jamsadr.com/rulesclauses). A hard copy of the rules will be provided to you upon request. **By agreeing to this arbitration procedure, both you and the Company waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding.** In addition, all claims, disputes, or causes of action under this section, whether by you or the Company, must be brought in an individual capacity, and shall not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The Arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any form of representative or class proceeding. This paragraph shall not apply to an action or claim brought in court pursuant to the California Private Attorneys General Act of 2004, as amended. The Company acknowledges that you will have the right to be represented by legal counsel at any arbitration proceeding. Questions of whether a claim is subject to arbitration under this agreement) shall be decided by the arbitrator. Likewise, procedural questions which grow out of the dispute and bear on the final disposition are also matters for the arbitrator. The arbitrator shall: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award; and (c) be authorized to award any or all remedies that you or the Company would be entitled to seek in a court of law. The Company shall pay all JAMS' arbitration fees in excess of the amount of court fees that would be required of you if the dispute were decided in a court of law. Nothing in this Agreement is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any awards or orders in such arbitrations may be entered and enforced as judgments in the federal and state courts of any competent jurisdiction.

Miscellaneous.

For purposes of federal immigration law, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your date of hire, or your employment may be terminated.

This letter, along with the Agreement, forms the complete and exclusive agreement regarding your employment with the Company. It supersedes any prior representations or agreements including, but not limited to, any representations made during your recruitment, interviews or pre-employment negotiations, whether written or oral. Except for those changes expressly reserved to the Company's discretion, the terms in this letter, including, but not

limited to, its at-will employment provision, may not be modified or amended except by a written agreement signed by an authorized officer or member of the Board of the Company and you. If any provision of this offer letter agreement is determined to be invalid or unenforceable, in whole or in part, this determination shall not affect any other provision of this offer letter agreement and the provision in question shall be modified so as to be rendered enforceable in a manner consistent with the intent of the parties insofar as possible under applicable law.

To accept the Company's offer, please sign and date this letter in the space provided below. If you accept our offer, your first day of employment will be on or around May 16 for the Company's AGM in Sydney Australia – June 6, 2016. Due to ongoing obligations at employee's current employer, it may be necessary to work through the end of May at his current company. AirXpanders will make every effort to allow the needed time for the employee to close out his required work flow. This offer of employment will terminate if it is not accepted, signed and returned by the close of business on May 6, 2016. If you choose to electronically submit your signed offer of employment, please send to my confidential email at sdodson@airxpanders.com or my confidential fax 650-390-9002.

[*Signature Page to Follow*]

We look forward to your favorable reply and to working with you at AirXpanders, Inc.

Sincerely,

DocuSigned by:
Scott Dodson
E902C9A4879F4ED...
Scott Dodson
President and CEO
AirXpanders, Inc.

Agreed to and accepted:

Signature: _____

Date: 2-May-2016

Exhibit 10.7

License Agreement between Shalon Ventures Inc. and Expanders Inc.

THIS LICENSE AGREEMENT (the "Agreement") is effective as of March 9, 2005 (the "Effective Date") and is made by and between Shalon Ventures Inc., a California corporation ("SV") and Expanders Inc., a Delaware corporation ("Licensee").

R E C I T A L S

WHEREAS, SV owns or controls certain Patent Rights and Know How (each as defined below) related to the use self inflating tissue expanders for therapeutic purposes as a result of an assignment from the inventors of the Patent Rights;

WHEREAS, Licensee has expertise in the area of medical product development.

WHEREAS, SV desires to grant a license to Licensee under certain Patent Rights and Licensee desires to obtain such a license upon the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the premises and of the covenants contained herein, the Parties mutually agree as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Agreement, the terms defined in this Article shall have the meanings specified below. Certain other capitalized terms are defined elsewhere in this Agreement.

1.1 "Active Program" shall mean an active, funded, relevant and ongoing research and development or commercial development program as evidenced by the expenditure of a total of at least two-hundred thousand dollars ($200,000) per annum in research and development for an Application Area.

1.2 "Affiliate" shall mean any corporation or other entity which controls, is controlled by, or is under common control with a Party. A corporation or other entity shall be regarded as in control of another corporation or entity if it owns or directly or indirectly controls more than fifty percent (50%) of the voting stock or other ownership interest of the other corporation or entity, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation or other entity or the power to elect or appoint more than fifty percent (50%) of the members of the governing body of the corporation or other entity.

1.3 "Application Areas" shall mean all human uses of self expanding tissue expanders.

1.4 "Know How" shall mean trade secrets, developments, inventions, discoveries, concepts, ideas, formulations, research or other materials, designs equipment, apparatus, processes, methods, techniques and plans, whether or not patentable, as well as related know-how.

1.5 "Licensed Patent Rights" shall mean the Patent Rights listed on Exhibit A hereto and all extensions, registrations, confirmations, reissues, divisions, continuations or continuations-in-part, to the extent the claims in such continuations-in-part are directed to subject matter specifically described in the original application or patent, re-examinations or renewals thereof, and any corresponding foreign filings claiming priority from any of the foregoing and all patents issuing from any of the foregoing, as may be amended from time to time.

1.6 "Net Sales" shall mean the gross amount invoiced by Licensee or its Affiliates for sales of Products, less the following:

(a) customary trade, quantity, or cash discounts to the extent actually allowed and taken;

(b) amounts repaid or credited by reason of rejection or return;

(c) to the extent separately stated on purchase orders, invoices, or other documents of sale, any taxes or other governmental charges levied on the production, sale, transportation, delivery, or use of a Product which is paid by or on behalf of Licensee or its Affiliates; and

(d) outbound transportation costs prepaid or allowed and costs of insurance in transit.

(e) Product returns.

No deductions shall be made for commissions paid to individuals whether they be with independent sales agencies or regularly employed by Licensee or its Affiliate and on its payroll, or for cost of collections. Net Sales shall occur on the date of invoicing for a Product. If a Product is distributed at a discounted price that is substantially lower than the customary price charged by Licensee or its Affiliate, or distributed for non-cash consideration (whether or not at a discount), Net Sales shall be calculated based on the non-discounted amount of the Product charged to an independent Third Party during the same calendar quarter or, in the absence of such sales, on the fair market value of the Product.

As used herein, "Combination Product" means a product that contains a Product as one component and at least one other active component. In the case of a Combination Product, Net Sales shall mean the gross amount received by Licensee or its Affiliate, as applicable, on sales of the Combination Product less the deductions set forth above, multiplied by a proration factor that is determined as follows: (i) if all components of the Combination Product were sold separately during the same or immediately preceding calendar quarter, the proration factor shall be determined by the formula [A / (A+B)], where A is the aggregate gross sales price of all Product components during such period when sold separately from the other active components, and B is the aggregate gross

sales price of the other active components during such period when sold separately from the Product components; or (ii) if all components of the Combination Product were not sold separately during the same or immediately preceding calendar quarter, the proration factor shall be determined by the formula [C / (C+D)], where C is the aggregate fully absorbed cost of the Product components during the prior calendar quarter and D is the aggregate fully absorbed cost of the other active components during the prior calendar quarter, with such costs being determined in accordance with generally accepted accounting principles. 1.7 "Party" shall mean SV or Licensee. "Parties" shall mean SV and Licensee, collectively.

1.7 "Patent Rights" shall mean all United States patents and patent applications, and all extensions, registrations, confirmations, reissues, divisions, continuations or continuations-in-part, to the extent the claims in such continuations in-part are directed to subject matter specifically described in the original application or patent, re-examinations or renewals thereof, and any corresponding foreign filings and all patents issuing from any of the foregoing.

1.8 "Products" shall mean products and methods for use in an Application Area including manufactures, compositions, methods or devices , which but for the license granted hereunder, the manufacture, use or sale of which, would infringe one or more Valid Claims of any of the Licensed Patent Rights. Where a Product is a method, the royalty shall be based on the fee for carrying out the service where there is no tangible product or on the product that is the result of performing the infringing method.

1.9 "Sublicensee" shall mean a sublicensee that is granted a sublicense to Licensee's rights under this Agreement in accordance with Section 2.2 hereto.

1.10 "Sublicense Income" shall mean payments or non-cash consideration that Licensee receives from a Sublicensee in consideration of a Sublicense, including, without limitation, any royalties based on sales of Products, license fees, milestone payments, license maintenance fee payments, and other payments, but specifically excluding amounts received by Licensee from a Sublicensee for equity or debt at fair market value, research and development, compensation for other products or services purchased from Licensee at fair market value, and the license or sublicense of any intellectual property other than the Patent Rights. The fair market value of any non-cash consideration shall be used to calculate Sublicense Income

1.11 "Term" shall have the meaning provided in Section 9.1 hereto.

1.12 "Territory" shall mean the world.

1.13 "Third Party" shall mean any entity other than one of the Parties or one of their respective Affiliates.

1.14 "Valid Claim" means, on a country per country basis, either: (i) a claim of an issued and unexpired patent included within the Licensed Patent Rights which has not been held permanently revoked, unenforceable or invalid by a decision of a court or other

governmental agency of competent jurisdiction, unappealable or unappealed within the time allowed for appeal, and which has not been admitted to be invalid or unenforceable through reissue re examination, disclaimer or otherwise; or (ii) a claim of a pending patent application included within the Licensed Patent Rights, which claim was filed in good faith and has not been abandoned or finally disallowed without the possibility of appeal or refiling of said application. Notwithstanding the foregoing, if a claim of a pending patent application has not issued as a claim of an issued patent within seven (7) years after the filing date from which such claim takes priority, such pending claim shall cease to be a Valid Claim for purposes of paying royalties under this Agreement unless and until such claim becomes an issued claim of an issued patent.

ARTICLE 2. LICENSES

2.1 License to Licensee. Subject to the terms and conditions of this Agreement and to any retained government rights, SV hereby grants to Licensee an exclusive right and license, with the right to grant sublicenses pursuant to Section 2.2 below, under the Licensed Rights to develop, make, have made, use, offer for sale, sell, have sold, import and export Products in the Application Areas in the Territory. Notwithstanding the above, other licensees of the Licensed Patent Rights in fields other than the Application Areas shall not be precluded from practicing their rights in the event of the adventitious employment of the rights licensed herein.

2.2 Sublicenses. Licensee shall incorporate terms and conditions into its sublicense agreements with Sublicensees sufficient to enable Licensee to comply with this Agreement. Licensee shall promptly furnish SV with a fully signed photocopy of any such sublicense agreement, deleting economic terms only if necessary. Upon termination of this Agreement for any reason, any Sublicensee not then in default under its sublicense agreement with Licensee shall have the right to seek a license directly from SV, and SV agrees to negotiate such licenses in good faith under reasonable terms and conditions; *provided that,* SV's and Sublicensee's obligations under any such negotiated license shall be no greater than the obligations provided hereunder.

ARTICLE 3. DILIGENCE

3.1 Diligence

3.1.1 Licensee shall use diligent efforts, and/or shall cause its Affiliates and Sublicensees to use diligent efforts, to develop Products and to introduce Products into the commercial market, and, thereafter to make Products reasonably available to the public. Licensee or Sublicensee shall provide Licensor a semi-annual progress report detailing its, its Affiliates or its Sublicensee's commercial diligence.

3.2 Compliance with Laws. Licensee shall comply and shall require its Affiliates and Sublicensees to comply with all applicable statutes, laws, ordinances, rules and regulations and obtain all appropriate government approvals pertaining to the sale, distribution, export and advertising of Products, including, without limitation, all Export Administration Regulations of the United States Department of Commerce. Licensee

shall bear sole responsibility for any violation of such laws and regulations by itself or its Affiliates or Sublicensees, and that it will indemnify, defend, and hold SV harmless (in accordance with Article 8 hereto) for the consequences of any such violation.

3.3 Termination Right. If Licensee is in breach of any of its obligations under this Article 3, SV shall have the right to terminate this Agreement in accordance with the provisions of Section 9.2 below. If an Affiliate or Sublicensee is in breach of any of its obligations under this Article 3, SV shall have the right to terminate the sublicense Agreement in accordance with the provisions of Section 9.2 below.

3.4 Upon termination for other than expiration of the Licensed Patent Rights, Licensee shall have three (3) months to complete the production of any Products that are works in progress and to sell any inventory of Products on hand as of the effective date of termination and may fill any bona fide orders accepted prior to the date of termination, provided that Licensee pays to SV the applicable royalties in accordance with Article 4 and provided that no such sale hereunder shall occur as from six (6) months after such termination.

ARTICLE 4. PAYMENTS, REPORTS, RECORDS

4.1 Royalties.

4.1.1 Licensee shall pay to SV a running royalty of three percent (3 %) of Net Sales.

4.1.2 Until royalties due and paid to SV in a calendar year exceed ten thousand dollars ($10,000), Licensee shall pay to SV its documented out of pocket costs for prosecuting and maintaining the patents underlying this license. The payments shall be a credit against future royalties due to SV subject to the restriction set forth in 4.1.1,

4.2 Reports.

4.2.1 Within six (6) months of the Effective Date, Licensee shall furnish SV with a written research and development plan describing the major tasks to be achieved in order to bring to market a Product, specifying the number of staff and other resources to be devoted to such commercialization effort ("R&D Plan"). Thereafter, sixty (60) days after the end of a calendar year until the first commercial sale for each Product, Licensee shall report to SV the amounts expended toward the development and commercialization of each Product and provide sufficient evidence to substantiate the amounts stated. The written report required shall also include at least the progress of Licensee's efforts during the immediately preceding calendar year to develop and commercialize Products, including, without limitation, its progress on the tasks detailed in its R&D Plan, reports of research and development activities, any changes in the R&D Plan, regulatory approvals, strategic alliances, and manufacturing, sublicensing and marketing efforts. The report shall also contain a discussion of intended efforts and sales projections for the year in which the report is submitted

4.2.2 Following the first commercial sale of a Product, Licensee shall provide written reports to SV within thirty (30) days of the end of each calendar quarter, containing at least the following information:

(a) the number of Products sold during such calendar quarter by Licensee and its Affiliates to independent Third Parties in each country;

(b) the gross price charged by Licensee and its Affiliates for each Product sold in each country during such calendar quarter;

(c) calculation of Net Sales for such calendar quarter in each country, including a listing of applicable deductions;

(d) total running royalties due on Net Sales in U.S. dollars, together with the exchange rates used for conversion, and if no royalties are due for such calendar quarter, the report shall so state;

(e) the names and addresses of any Sublicensees granted a sublicense during such calendar quarter;

(f) the amount of Sublicense Income received by Licensee during such calendar quarter from each Sublicensee and the amount due to SV from such Sublicense Income, including an itemized breakdown of the sources of income comprising the Sublicense Income and any Licensee audit documents of Sublicense; and

(g) any running royalties or payments based on Sublicense Income due shall be paid in the quarter in which they are received by Licensee with the report delivered pursuant to this Section 4.3.

4.3 Records and Audits. Licensee shall maintain, and shall cause its Affiliates and Sublicensees to maintain, complete and accurate records, in accordance with generally accepted accounting principles, relating to the development and commercialization of Products and any amounts payable in relation to this Agreement, which records shall contain sufficient information to permit SV to confirm the accuracy of any reports delivered hereunder and compliance in other respects with this Agreement. Licensee shall, and shall cause its Affiliates and Sublicensees to, retain such records at Licensee's, its Affiliates' or Sublicensees' place of business, as applicable, for at least three (3) years following the end of the calendar year to which they pertain, during which time SV or its appointed agents, shall have the right, at SV's expense (subject to the last sentence of this Section 4.3), to inspect such records during normal business hours at mutually agreeable times to verify any reports and payments made, or compliance in other respects, under this Agreement. Licensee shall require that its Affiliates and Sublicensees allow such inspections by SV. In the event that any audit performed pursuant to this Section 4.4 reveals an underpayment in excess of five percent (5%), Licensee shall bear the full cost of such audit and shall remit any amounts due to SV within thirty (30) days of receiving notice thereof from SV.

4.4 Payments in U.S. Dollars. All payments due under this Agreement shall be drawn on a United States bank and shall be payable in United States dollars. Conversion of foreign currency to United States dollars shall be made at the conversion rate existing in the United States (as reported in the Wall Street Journal) on the last working day of the calendar quarter for which a report under Section 4.3 is due. Such payments shall be without deduction of exchange, collection, or other charges, and, specifically, without deduction of withholding or similar taxes or other government imposed fees or taxes, except as permitted in the definition of Net Sales. If a foreign government taxes the royalty income due SV, it is Licensee's duty to pay the tax without an offset from SV.

4.5 Late Payments. Any payments to be made hereunder that are not paid on or before the date such payments are to be made under this Agreement shall bear interest from the date payment is to be made at the lower rate of: (a) two percentage points above the Prime Rate of interest as reported in the Wall Street Journal on the date payment is due; and (b) the maximum rate permitted by law.

ARTICLE 5. INTELLECTUAL PROPERTY OWNERSHIP AND PROTECTION

5.1 Ownership. Licensee hereby acknowledges that, as between Licensee and SV, SV is the owner of all right, title and interest in and to the Licensed Rights.

5.2 Patent Prosecution: SV shall have the primary right, but not the obligation, on its own or through its designee, to prepare, file, prosecute, and maintain (collectively, "Prosecute") the Licensed Patent Rights. In the event that SV desires to abandon any Licensed Patent Right that is necessary or useful for developing, making, having made, using, offering for sale, selling, having sold, importing or exporting Products in an Application Area or to decline responsibility for the Prosecution of any such Licensed Patent Right, SV shall provide Licensee with sufficient prior written notice of such intended abandonment or declination of responsibility so that Licensee shall have the opportunity to assume responsibility for the preparation, filing, prosecution or maintenance of such Licensed Patent Right without the loss of any rights therein, and Licensee or its designee shall have the right, at its cost and expense, to Prosecute the relevant Licensed Patent Right in the name of SV, as appropriate, to the extent legally necessary.

5.3 Enforcement of Patent Rights.

5.3.1 Notices of Alleged or Threatened Infringement. Each Party shall promptly notify the other in writing (1) of any alleged or threatened infringement by a Third Party of any Licensed Patent Right, (2) if such Party, or any of its Affiliates or Sublicensees, shall be individually named as a defendant in a legal proceeding brought by a Third Party for infringement of a patent because of the practice of any Licensed Patent Right, or (3) of any attempts by Third Parties to invalidate any Licensed Patent Right, and shall provide such other Party with all available evidence of any such alleged or threatened infringement, proceeding or attempt

5.3.2 Enforcement of the Licensed Patent Rights. SV or its designee shall have the primary right, but not the obligation, under its own or its designee's control and at its own or its designee's expense, to prosecute any Third Party infringement of the Licensed Patent Rights and/or to defend the Licensed Patent Rights in any declaratory judgment action brought by a Third Party which alleges invalidity, unenforceability, or non-infringement of the Licensed Patent Rights. If SV or its designee recovers any damages, by way of settlement or otherwise, in connection with such prosecution or defense, such recovery shall be retained by SV or its designee. Should SV and its designee elect not to prosecute any such infringement or defend any such declaratory judgment action on its own or through a designee by an entity commercializing products in an Application Area within sixty (60) days of SV becoming aware of or being notified of such infringement or action, then Licensee or its designee shall have the right to do so under its own control and at its own expense and in the name of SV to the extent legally necessary. If Licensee recovers any damages, by way of settlement or otherwise, in connection with such prosecution or defense, after Licensee recovers twice its legal fees and expenses, it shall pay to SV running royalties on any amount of such damages based on lost sales. Any additional damages recovered shall be retained by Licensee.

5.4 Cooperation. Each Party shall take all actions reasonably requested by another Party, and shall require its Affiliates and Sublicensees to do the same, to assist the requesting Party, at the requesting Party's expense, in the filing, prosecution, maintenance, and enforcement of any of the Licensed Patent Rights pursuant to this Article 5, including without limitation making available to the other Party (or to the other Party's authorized attorneys, agents or representatives) its employees, agents or consultants, and the signing, or causing its employees, agents or consultants to sign, all documents relating to said patent applications or patents. In addition, each Party consents to being named as a party in any action if such Party is an indispensable party to any action which the other Party is entitled to bring under this Article 5; *provided,* that the other Party agrees to defend, indemnify and hold harmless such Party against any claims or liabilities arising from such action.

ARTICLE 6. CONFIDENTIALITY

6.1 Nondisclosure Obligations. During the Term and for three (3) years thereafter, each Party (a "Receiving Party") shall cause all proprietary business information of the other Party (a "Disclosing Party") and which is obtained by the Receiving Party or its officers, employees and other representatives in connection with the negotiation or performance of this Agreement and not previously known to such Party (collectively, "Confidential Information"), to be treated as confidential and shall not use any such information other than in the normal course of its business as and to the extent contemplated hereunder, which use shall be made in such a way as is intended to protect the proprietary nature and confidentiality thereof, consistent with the Party's practices for the protection of its own proprietary and confidential information, but in no event less than reasonable care. Each Party represents, warrants and covenants that it has instructed or will instruct its officers, employees and other representatives having access to such information of such Party's obligation of confidentiality.

6.2 Exceptions. Notwithstanding the foregoing, a Receiving Party may disclose any information which such Party is obligated under this Agreement to keep confidential as follows:

(A) to which the other Disclosing Party consents in writing;

(B) to officers, employees and other representatives and attorneys of the Receiving Party who need to know such confidential information for the purpose of assisting or advising such Party, provided that the Receiving Party informs each such officer, employee and other representative and attorney of the confidential nature of such information and such person is obligated to maintain the information in confidence;

(C) to Third Parties whose consent or approval is required for consummating and performing the transactions contemplated herein to the extent necessary to obtain such consent or approval and, if practicable, subject to the agreement of such Third Party to maintain the confidentiality thereof;

(D) if required under applicable law or in connection with any filings or registrations with any court, arbitration board, administrative agency or commission, or other governmental or regulatory body, agency, instrumentality or authority, which are required to consummate and perform the transactions contemplated by this Agreement; and

(E) in order to use such information as evidence in or in connection with any pending or threatened litigation related to this Agreement or any transaction contemplated hereunder;

(F) each party shall have the right to disclose this agreement or portions of it in confidence as provided in this Article to a party with a need to know;

but in each case only to the extent such disclosure is necessary in connection with the purpose for which disclosure is permitted and, if practicable, subject to the agreement of such Third Party to maintain the confidentiality thereof. The obligations of confidentiality set forth herein shall not apply to information generally available to the public or in the possession of the Receiving Party prior to its disclosure under this Agreement or that is given to the Receiving Party on a non-confidential basis by another person other than in breach of obligations of confidentiality owed by such person to the Disclosing Party under this Agreement.

6.3 Obligations Upon Termination. In the event of the expiration or termination of this Agreement, each Receiving Party shall return or destroy, and cause any person acting on its behalf in connection with the transactions contemplated by this Agreement to return or destroy, all such Confidential Information (including copies thereof), except one copy thereof which may be retained to evidence a Party's legal rights and obligations under this Agreement or in connection with any legal action related thereto.

6.4 Terms of this Agreement. The Parties each agree not to disclose any terms or conditions of this Agreement to any Third Party without the prior consent of the other Party; *provided,* that each Party shall be entitled to disclose the terms of this Agreement without such consent to potential investors or other financing sources or to potential merger or acquisition candidates on the condition that such entities or persons agree to keep such terms confidential for the same time periods and to the same extent as such Party is required to keep such terms confidential.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES

7.1 Mutual Representations. Each Party hereby represents, warrants and/or covenants to the other Party that (a) it has the legal right and power to enter into this Agreement, to extend the rights and licenses granted under this Agreement, and to perform fully its obligations hereunder, (b) this Agreement has been duly executed and delivered and is a valid and binding agreement of such Party, enforceable in accordance with its terms, (c) it has obtained all necessary consents and approvals to the transactions contemplated hereby, (d) it has not made and will not make any commitments to others in conflict with or in derogation of such rights or this Agreement, and (e) the execution of this Agreement and the arrangements and transactions contemplated by this Agreement do not conflict with or breach the terms of any agreement that such Party or its Affiliates may have with any Third Party as of the Effective Date.

7.2 Disclaimer of Representations and Warranties. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, SV DOES NOT MAKE ANY REPRESENTATIONS OR EXTEND ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE NON-INFRINGEMENT OF ANY THIRD PARTY PATENTS OR PROPRIETARY RIGHTS, AND ALL UNIFORM COMMERCIAL CODE WARRANTIES, OR SIMILAR WARRANTIES UNDER LAWS OF ANY OTHER COUNTRY, ARE EXPRESSLY DISCLAIMED BY SV.

7.3 Limitation of Liability. No Party accepts any liability under or in relation to this Agreement or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any: loss of profits; loss of sales; loss of turnover; loss of or damage to business; loss of or damage to reputation; loss of contracts; loss of customers; wasted management or other staff time; losses or liabilities under or in relation to any other contract; indirect, special or consequential loss or damage, and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

ARTICLE 8. INDEMNIFICATION

8.1 By Licensee. Licensee hereby agrees at all times to defend, indemnify and hold SV and its Affiliates, and their respective assignees, successors, and the officers, agents, employees of each of them (each an "SV Indemnitee"), harmless from and against any and all claims, damages, liabilities, losses, costs and expenses (including, without limitation, attorneys' fees) (collectively, "Losses") arising out of or in connection with any Third Party claim based on:

(a) any material breach of any representation, warranty, covenant, condition or agreement made or to be performed by Licensee under the terms of this Agreement;

(b) the commercialization of Products or any other exercise or practice by Licensee, its Affiliates or Sublicensees (except for those Affiliates and Sublicensees explicitly approved by SV) of the licenses granted hereunder to Licensee, including, without limitation, (i) any claim based on an alleged breach of any warranty, implied or otherwise, of merchantability or fitness for a particular purpose or intended use, (ii) any claim of infringement of a Third Party's intellectual property rights; (iii) any claim alleging or based on product liability or false advertising, and/or (iv) any claim arising on account of any injury or death of persons or damage to property; or

(c) the gross negligence, intentional misconduct or illegal actions of a Licensee Indemnitee (as defined below).

Provided, however, that the foregoing indemnification obligations shall not apply to any Losses to the extent directly attributable to (i) the gross negligence, intentional misconduct or illegal actions of an SV Indemnitee, (ii) the material breach of the representations and warranties hereunder by SV, or (iii) the settlement of a claim, suit, action, or demand by an SV Indemnitee without the prior written approval of Licensee.

8.2 By SV. SV hereby agrees at all times to defend, indemnify and hold harmless Licensee and its Affiliates and Sublicensees, and their respective successors, and the officers, agents, and employees of each of them (each a "Licensee Indemnitee"), from and against any and all Losses arising out of or in connection with any Third Party claim based on:

(a) any material breach of any representation, warranty, covenant, condition or agreement made or to be performed by SV under the terms of this Agreement; or

(b) the gross negligence, intentional misconduct or illegal actions of an SV Indemnitee.

Provided, however, that the foregoing indemnification obligations shall not apply to any liability, demands, damage, expense or losses to the extent directly attributable to (i) the gross negligence, intentional misconduct or illegal actions of a Licensee Indemnitee, (ii) the breach of the representations and warranties hereunder by Licensee, or (iii) the settlement of a claim, suit, action, or demand by a Licensee Indemnitee without the prior written approval of SV.

8.3 Indemnification Procedure. In the event that an SV Indemnitee or a Licensee Indemnitee (each an "Indemnitee") intends to claim indemnification hereunder, such Indemnitee shall promptly notify the indemnifying Party of any liability in respect of which the Indemnitee intends to claim such indemnification, and the indemnifying Party

shall assume and have exclusive control over the defense thereof with counsel selected by the indemnifying Party that is reasonably satisfactory to the Indemnitee; *provided, however,* that such Indemnitee shall have the right to fully participate in any such action or proceeding and to retain its own counsel, with the reasonable fees and expenses to be paid by the indemnifying Party, if representation of such Indemnitee by the counsel retained by the indemnifying Party would be inappropriate under applicable standards of professional conduct due to actual or potential differing interests between such Indemnitee and any other party represented by such counsel in such proceedings. Neither the indemnifying Party nor the Indemnitee shall enter into any settlement agreement with any Third Party without the consent of the other Party, which consent shall not be unreasonably withheld or delayed. The failure to deliver notice to the indemnifying Party within a reasonable time after the commencement of such action, to the extent prejudicial to the indemnifying Party's ability to defend such action, shall relieve the indemnifying Party of its indemnification obligations hereunder, but the failure to so deliver notice to the indemnifying Party will not relieve it of any liability that it may have to any Indemnitee otherwise than as aforesaid. The Indemnitee shall, at the expense of the indemnifying Party, cooperate with the indemnifying Party and its legal representatives in the investigation and defense of any liability covered by this Agreement.

8.4 Insurance. From the date of the first commercial sale of a Product by Licensee, its Affiliates or Sublicensees until three (3) years from the end of the Term, Licensee shall have and maintain such types and amounts of liability insurance as is normal and customary in the industry generally for parties similarly situated, and shall upon request provide SV with a copy of its policies of insurance in that regard, along with any amendments and revisions thereto.

ARTICLE 9. TERM AND TERMINATION

9.1 Term. This Agreement shall commence on the Effective Date and shall expire upon the expiration of the last-to-expire Valid Claim or while there is a pending patent application under the Licensee Patent Rights, unless earlier terminated as provided hereunder (the "Term").

9.2 Termination for Breach. If a Party fails to comply with any of the material terms and conditions of this Agreement, the other Party may terminate this Agreement upon ninety (90) days' written notice to the defaulting Party specifying any such breach unless within the period of such notice, all breaches specified therein shall have been remedied, or unless the breach is one which, by its nature, cannot be fully remedied in ninety (90) days, but the breaching party has undertaken reasonable and continuous, good faith efforts toward remedying the breach within such ninety (90) days, and continues to use reasonable, good faith, and diligent efforts to promptly remedy the breach.

9.3 Termination for Insolvency. Either Party may terminate this Agreement if the other Party becomes insolvent, has a petition in bankruptcy filed against it, which is consented to, acquiesced in or remains undismissed for ninety (90) days, makes a general assignment for the benefit of creditors, or has a receiver appointed. In addition to the right to terminate this Agreement under this Section 9.3, the Parties shall have all legal and equitable remedies available to enforce the terms and conditions of this Agreement.

9.4 Effects of Termination and Expiration.

9.4.1 Upon any termination of this Agreement:

(a) Licensee, its Affiliates and Sublicensees shall have three (3) months to complete the production of any Products that are works in progress and to sell any inventory of Products on hand as of the effective date of termination and may fill any *bona fide* orders accepted prior to the date of termination, provided that Licensee pays the applicable royalties and sublicense fees in accordance with Article 4 hereto and provided that no such sale hereunder shall occur later than six (6) months after such termination or produced thereafter from works in progress;

(b) All amounts due but previously unpaid by any terminated Party shall be due and payable as of the time of termination; and

(c) all rights and licenses granted to Licensee hereunder shall immediately terminate.

9.4.2 Upon expiration of this Agreement, each Party shall retain a fully paid-up, royalty-free, non-exclusive right and license under any Know How of the other Party licensed hereunder. SV shall have the sole right to negotiate with Licensee for Know-How developed by Licensee in the development and commercialization of a Product that Licensee no longer intends to sell.

9.4.3 Upon expiration or termination of this Agreement:

(a) The Parties shall abide by their obligations under Section 9.4.1 above; and

(b) In addition to and in no way limiting the provisions of Section 9.4.1 above, upon expiration or termination of this Agreement, Articles 1, 4, 5, 6, 7 and 8 and Sections 4.4, 4.5, 4.6, 5.3, 5.5, 10.7 and 10.8 shall survive expiration or termination of this Agreement in accordance with their terms.

ARTICLE 10. MISCELLANEOUS

10.1 Further Assurances. Each of the Parties shall execute such documents, further instruments of transfer and assignment and other papers and take such further actions as may be reasonably required or desirable to carry out the provisions hereof and the transactions contemplated hereby.

10.2 Assignment. This Agreement may not be assigned or otherwise transferred by either Party without the consent of the other Party; *provided, however,* that either Party may, without such consent, assign its rights and obligations under this Agreement (a) to an Affiliate in connection with a corporate reorganization, (b) in connection with a merger, consolidation or sale of substantially all of such Party's assets to an unrelated

Third Party, or (c) the sale, transfer or other disposition of all or substantially all of the assets allocated to such Party's division or business unit to which this Agreement relates; *provided, however,* that the assigning Party's rights and obligations under this Agreement shall be assumed in writing by its successor in interest in any such transaction. Any purported assignment in violation of this Section 10.2 shall be void.

10.3 Force Majeure. If the performance of this Agreement or any obligation hereunder is prevented, restricted or interfered with by reason of fire or other casualty or accident, strikes or labor disputes, terrorist acts, inability to procure raw materials, power or supplies, or other violence, any law, order, proclamation, regulation, ordinance, demand or requirement of any government agency, or any other act or condition whatsoever beyond the control of a Party hereto, the Party so affected, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the Party so affected shall use its best efforts to avoid or remove such causes of non-performance and shall continue performance hereunder with the utmost dispatch whenever such causes are removed.

10.4 Severability. Each Party hereby agrees that it does not intend to violate any public policy, statutory or common laws, rules, regulations, treaty or decision of any government agency or executive body thereof of any country or community or association of countries. Should one or more provisions of this Agreement be or become invalid, the Parties hereto shall substitute, by mutual consent, valid provisions for such invalid provisions which valid provisions in their economic effect are sufficiently similar to the invalid provisions that it can be reasonably assumed that the Parties would have entered into this Agreement with such valid provisions. In case such valid provisions cannot be agreed upon, the invalidity of one or several provisions of this Agreement shall not affect the validity of this Agreement as a whole, unless the invalid provisions are of such essential importance to this Agreement that it is to be reasonably assumed that the Parties would not have entered into this Agreement without the invalid provisions.

10.5 Notices. Any consent, notice or report required or permitted to be given or made under this Agreement by one of the Parties hereto to another Party shall be in writing, delivered personally or by e-mail or facsimile (and promptly confirmed by first class mail), by a next business day delivery service of a nationally recognized overnight courier service or by courier, postage prepaid (where applicable), addressed to such other Party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor in accordance with this Section 9.5 and shall be effective upon sending by the notifying Party in accordance with this Section 10.5.

If to SV	Shalon Ventures Inc. 532 Emerson St. Palo Alto, CA 94301 USA Attention: Chairman Telephone: 650-473-9190x199 E-mail :teddy@shalon.com
with a copy to:	Alan Mendelson Latham & Watkins 135 Commonwealth Drive Menlo Park CA 94025 +1 (650) 463-4693 Alan.Mendelson@LW.com
If to Licensee:	Expanders, Inc. 532 Emerson St. Palo Alto, CA 94301 U.S.A. Attention: Norm Sokoloff Telephone: 650-473-9190 x103 E-mail: norm@shalon.com

10.6 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to any choice of law principle that would dictate the application of the laws of another jurisdiction.

10.7 Dispute Resolution. Any disputes, other than a claim for injunctive relief pursuant to Section 10.8 below, arising between the Parties relating to, arising out of or in any way connected with this Agreement or any term or condition hereof, or the performance by any Party of its obligations hereunder, whether before or after termination of this Agreement, shall be resolved by binding arbitration. In any such arbitration, SV shall not be represented by any SV Member who owns a substantial amount of equity in Licensee or is otherwise able to significantly influence Licensee's management and governance through participation as an officer, director, member, manager, stockholder or principal.

10.8 Injunctive Relief. The Parties hereby acknowledge that certain breaches of this Agreement may cause irreparable harm and that the remedy or remedies at law for any such breach may be inadequate. The Parties hereby agree that, in the event of any such breach, in addition to all other available remedies hereunder, the non-breaching Party or Parties shall have the right to obtain equitable relief to enforce this Agreement in any court of competent jurisdiction.

10.9 Entire Agreement. This Agreement, together with the Exhibits hereto contain the entire understanding of the Parties with respect to the subject matter hereof. All express or implied agreements and understandings, either oral or written, heretofore made are expressly merged in and made a part of this Agreement. This Agreement may be

amended, or any term hereof modified, only by a written instrument duly executed by the Parties hereto. Each of the Parties hereby acknowledges that this Agreement is the result of mutual negotiation and therefore any ambiguity in its terms shall not be construed against the drafting Party.

10.10 Headings. The captions to the several Articles and Sections hereof are not a part of this Agreement, but are merely guides or labels to assist in locating and reading the several Articles and Sections hereof.

10.11 Independent Contractors. It is expressly agreed the Parties shall be independent contractors and that the relationship between the Parties contemplated by this Agreement shall not constitute a partnership, joint venture or agency.

10.12 Waiver. Except as expressly provided herein, the waiver by any Party hereto of any right hereunder or of any failure to perform or any breach by the other Party shall not be deemed a waiver of any other right hereunder or of any other failure to perform or breach by said other Party, whether of a similar nature or otherwise, nor shall any singular or partial exercise of such right preclude any further exercise thereof or the exercise of any other such right.

10.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be exchanged by facsimile if mutually agreed by the Parties.

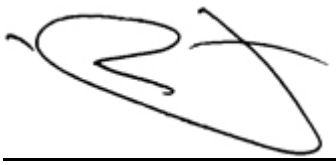
10.14 Expenses. Each of the Parties hereto shall bear their own respective costs and expenses in connection with the negotiation, execution and delivery of this Agreement and the transactions contemplated hereby and thereby.

10.15 Voluntary Act of Parties. Each of the Parties hereto acknowledges that it is entering into the Agreement voluntarily and without coercion, that it has been represented by counsel of its choice throughout the negotiation of this Agreement, and that it fully understands that terms and conditions of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

SHALON VENTURES Inc



By: _____
Name: Tadmor Shalon
Title: CEO

EXPANDERS, INC.

By: _____
Name: Daniel Jacobs MD
Title: Vice President

EXHIBIT A

Licensed Patent Rights

U.S. provisional patent application no. 60/ 612,018, filed September 21, 2004.

Exhibit 10.8

FIRST AMENDMENT TO LICENSE AGREEMENT

This FIRST AMENDMENT ("Amendment") to license agreement is effective as of March 9, 2009 and is made by and between Shalon Ventures, Inc., a California corporation ("SV") and AirXpanders, Inc., a Delaware corporation ("Licensee").

RECITALS

WHEREAS, Licensee was incorporated in Delaware on March 17, 2005 under the name "Expanders, Inc.", and subsequently changed its name from "Expanders, Inc." to "AirXpanders, Inc." on December 28, 2006.

WHEREAS, SV entered into the LICENSE AGREEMENT ("License Agreement") with the Licensee on March 9. 2005. eight (8) days prior to the Licensee's incorporation in Delaware.

WHEREAS, both SV and Licensee intended to enter into the License Agreement and be bound by its terms and conditions, both SV and Licensee have abided by the terms and conditions of the License Agreement since March 2005 and both SV and Licensee intend to continue to be bound by the terms and conditions of the License Agreement.

WHEREAS, SV and Licensee desire to amend the License Agreement to (i) reconfirm that SV and the Company are, and always have been, the correct parties to the License Agreement, (ii) alter patent prosecution rights and costs described in Section 5.2 and 4.1.2 of the License Agreement, and (iii) alter the rights of SV to terminate for insolvency as described in Section 9.3 of the License Agreement.

NOW THEREFORE, in consideration of the premises and of the covenants contained herein, SV and Licensee herby agree that SV and Licensee have been bound as the correct parties to the License Agreement since March 17, 2005, and will continue to be bound by the terms and conditions of the License Agreement until the termination of the License Agreement, and further agree to additional changes in the terms of the License Agreement as follows:

ARTICLE 4. PAYMENTS, REPORTS, RECORDS

A. Section 4.1.2 shall be stricken in its entirety.

ARTICLE 5. INTELLECTUAL PROPERTY OWNERSHIP AND PROTECTION

A. Section 5.2 shall be stricken in its entirety and replaced with the following:

5.2 Patent Prosecution: Licensee shall, at Licensee's expense, have the first right, but not the obligation, on its own or through its designee, to prepare, file,

prosecute, and maintain (collectively, "Prosecute") the Licensed Patent Rights. In the event that Licensee desires to abandon any Licensed Patent Right that is necessary or useful for developing, making, having made, using, offering for sale, selling, having sold, importing or exporting Products in an Application Area or to decline responsibility for the Prosecution of any such Licensed Patent Right, Licensee shall provide SV with sufficient written notice of such desired abandonment or declination of responsibility so that SV shall have the opportunity to assume responsibility for the preparation, filing, prosecution or maintenance of such Licensed Patent Right without the loss of any rights therein.

ARTICLE 9. TERM AND TERMINATION

A. Section 9.3 shall be stricken in its entirety and replaced with the following:

9.3 Termination for Insolvency: Licensee may terminate this Agreement if SV becomes insolvent, has a petition in bankruptcy filed against it, which is consented to, acquiesced in or remains undismissed for ninety (90) days, makes a general assignment for the benefit of creditors, or has a receiver appointed. Notwithstanding Licensee's right to terminate this Agreement under this Section 9.3, both Parties shall have all legal and equitable remedies available to enforce the terms and conditions of this Agreement.

All other terms of the License Agreement shall remain in full force and effect.

IN WITNESS HEREOF, the parties have caused this Amendment to be executed by their duly authorized officers as of the Effective Date.

SHALON VENTURES, INC.

By: _____
Name: Tadmor Shalon
Title: CEO

AIRXPANDERS, INC.

By: _____
Chris Jones
Title: President

IN WITNESS HEREOF, the parties have caused this Amendment to be executed by their duly authorized officers as of the Effective Date.

SHALON VENTURES, INC.

By: _____
Name: Tadmor Shalon
Title: CEO

AIRXPANDERS, INC.

By: _____
Chris Jones
Title: President

Exhibit 10.9

SECOND AMENDMENT TO LICENSE AGREEMENT

This SECOND AMENDMENT ("**Amendment**") to license agreement is effective as of January 9, 2012 (the "**Amendment Effective Date**") and is made by and between Shalon Ventures, Inc., a California corporation ("**SV**") and AirXpanders, Inc., a Delaware corporation ("**Licensee**").

RECITALS

WHEREAS, SV and Licensee are parties to a certain license agreement, effective as of March 9, 2005, as amended on March 9, 2009 (collectively, the "**Agreement**").

WHEREAS, SV and Licensee desire to amend the Agreement to provide Licensee with the first right to enforce the Licensed Patent Rights against potential infringers.

WHEREAS, SV and Licensee desire to amend the Agreement to clarify the meaning of the Licensed Patent Rights.

NOW THEREFORE, in consideration of the premises and of the covenants contained herein, SV and Licensee agree as follows:

1. AMENDMENTS OF THE AGREEMENT.

1.1 Section 5.3.2 of the Agreement is hereby deleted and replaced in its entirety with the following:

> **5.3.2** Enforcement of the Licensed Patent Rights. Licensee or its designee shall have the first right, but not the obligation, under its own or its designee's control and at its own or its designee's expense, to bring an enforcement action against any alleged Third Party infringement of the Licensed Patent Rights and/or to defend the Licensed Patent Rights in any declaratory judgment action brought by a Third Party which alleges invalidity, unenforceability, or non-infringement of the Licensed Patent Rights. Upon request of the Licensee, SV shall cooperate with Licensee in connection with such enforcement and/or defense and permit Licensee to prosecute such action, at Licensee's expense, including, without limitation, being a named party if required to bring or maintain such action. If Licensee or its designee recovers any damages, by way of settlement or otherwise, in connection with such prosecution or defense, such recovery shall be retained by Licensee or its designee. Should Licensee and its designee elect not to bring any such enforcement action, defend any such declaratory judgment action or engage in sublicense negotiations with an alleged infringer within one hundred eighty (180) days after Licensee being notified of such infringement or action by SV, then SV or its designee shall have the right to do so under its own control and at its own expense. Upon request of SV, Licensee shall cooperate with SV in connection with such enforcement, at SV's expense. If SV or its designee recovers any damages, by way of settlement or otherwise, in connection with such prosecution or defense, such recovery shall be retained by SV.

1.2 Section 1.5 of the Agreement is hereby deleted and replaced in its entirety with the following:

1.5 "Licensed Patent Rights" shall mean the Patent Rights listed on Exhibit A hereto and all patents and patent applications claiming priority to such patents and patent applications, including all extensions, registrations, confirmations, reissues, divisions, continuations, continuations-in-part, reexaminations and renewals thereof, and any foreign filings corresponding to any of the foregoing and all patents issuing from any of the foregoing, as may be amended from time to time.

1.3 Exhibit A of the Agreement is hereby deleted and replaced in its entirety with the following:

EXHIBIT A

Licensed Patent Rights

Country	App. No.	Filing Date	Pub. No.	Pub. Date
U.S.	60/612,018	9/21/2004		
U.S.	60/688,964	6/9/2005		
U.S.	11/231,482	9/21/2005	2006-0069403-A1	3/30/2006
WIPO	US2005/033664	9/21/05	W02006/034273	3/30/06
U.S.	12/560,160	9/15/2009	2010-0010531-A1	1/14/2010
U.S.	61/288,197	12/18/2009		
U.S.	12/973,693	12/20/2010	2011-0152913-A1	6/23/2011
WIPO	US2010/061340	12/20/2010	WO 2011/075731	6/23/2011
Australia	2005286840	9/21/2005		
Canada	2,581,320	9/21/2005		
Europe	5798758.8	9/21/2005	1811914	8/1/2007
Japan	2007-533585	9/21/2005	2008-513182	5/1/2008
U.S.	13/313,904	12/7/2011		
U.S.	13/313,919	12/7/2011		

2. MISCELLANEOUS

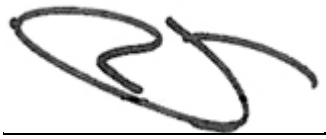
2.1 Full Force and Effect. This Amendment amends the terms of the Agreement and is deemed incorporated into the Agreement, effective as of the Amendment Effective Date. Where the Agreement is not explicitly amended, the terms of the Agreement will remain in full forth and effect. Capitalized terms used in this Amendment that are not otherwise defined herein shall have the meanings such terms are given in the Agreement.

2.2 Entire Agreement. The Agreement and this Amendment constitute the entire agreement, both written and oral, between the parties with respect to the subject matter hereof, and any and all prior agreements with respect to the subject matter hereof, either written or oral, expressed or implied, are superseded hereby, merged and canceled, and are null and void and of no effect.

2.3 Counterparts. This Amendment may be executed in one or more counterparts, each of which will be an original and all of which together will constitute one instrument.

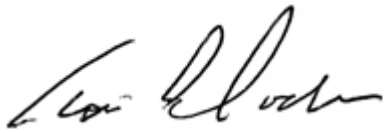
IN WITNESS WHEREOF, SV and Licensee have executed this Amendment by their respective duly authorized representatives as of the Amendment Effective Date.

SHALON VENTURES, INC.

By: 

Name: T. Shalon
Title: CEO

AirXpanders, Inc.

By: 

Name: Scott Dodson
Title: President / CEO

Exhibit 10.10

THIRD AMENDMENT TO LICENSE AGREEMENT

This Third Amendment to License Agreement ("Third Amendment") is dated January 15, 2014, and further amends the license agreement between Shalon Ventures ("SV") and AirXpanders, Inc. ("Licensee") dated March 9, 2005, (the "Original Agreement") as amended March 9, 2009, (the "First Amendment") and January 9, 2012 (the "Second Amendment") (collectively, the "Amended License Agreement").

RECITALS

WHEREAS, in the Original Agreement SV granted Licensee exclusive rights under Licensed Patent Rights owned by SV as defined by Section 1.5 and Exhibit A of the Original Agreement; and

WHEREAS, the Second Amendment updated Exhibit A of the Original Agreement to include patent applications co-owned by SV and by Licensee; and

WHEREAS, the parties would like to clarify the language of the Original License Agreement, as amended by the First Amendment and the Second Amendment (the "Amended License Agreement) to confirm that Licensee has not assigned any of its rights in the co-owned patent applications to SV;

NOW, THEREFORE, in consideration of their respective interests in clarifying the language of the Amended License Agreement, the parties agree as follows:

1. Amendments of the Agreement

1.1 Article 1 of the Amended Licensed Agreement is amended to include the following new sections:

"1.15 'Jointly Owned Patent Rights' means (a) the patents and patent applications listed in Exhibit B hereto ("Exhibit B Patents" and "Exhibit B Applications" respectively); and (b) each patent and patent application that claims priority to an Exhibit B Patent or an Exhibit B Application, including all extensions, registrations, confirmations, reissues, divisions, continuations, continuations-in-part, reexaminations and renewals thereof, and any foreign filings corresponding to any of the foregoing and all patents issuing from any of the foregoing (for convenience, "Exhibit B Follow-On Patents" and "Exhibit B Follow-On Applications" respectively). It is agreed and understood, however, that an Exhibit B Follow-On Patent and an Exhibit B Follow-On Application shall not constitute a "Jointly Owned Patent Right" unless such Exhibit B Follow-On Patent or Exhibit B Follow-On Application is jointly owned by SV and Licensee by virtue of (i) assignments to SV from at least a portion (but not all) of the inventors named in such Exhibit B Follow-On Patent or Exhibit B Follow-On Application and (ii) assignments to Licensee from one or more of the remaining inventors named in such Exhibit B Follow-On Patent or Exhibit B Follow-On Application."

"1.16 'SV Solely Owned Patent Rights' means (a) the patents and patent applications listed in Exhibit A hereto; (b) all patents and patent applications claiming priority to such patents and patent applications listed in Exhibit A, including all extensions, registrations, confirmations, reissues, divisions, continuations, continuations-in-part (to the extent such divisions, continuations, and continuations-in-part are solely owned by SV by virtue of assignments from all of the inventors named in such patents and patent applications only to SV), reexaminations and renewals thereof, and any foreign filings corresponding to any of the foregoing and all patents issuing from any of the foregoing; and (c) any reissues, divisions, continuations, continuations-in-part, reexaminations of the Jointly Owned Patent Rights solely owned by SV by virtue of assignments from all of the inventors named in such patents and patent applications only to SV."

"1.17 'SV Inventor' means an inventor employed by, under contract to, or otherwise controlled by SV."

1.2 Section 1.5 of the Amended License Agreement is hereby deleted and replaced in its entirety with the following:

"1.5 'Licensed Patent Rights' means (a) the SV Solely Owned Patent Rights; and (b) SV's interests in the Jointly Owned Patent Rights."

1.3 The term "Licensed Rights" is deleted from Section 2.1 and the term "Licensed Patent Rights" is inserted in its place.

1.4 Section 5.1 of the Amended License Agreement is hereby deleted and replaced in its entirety with the following:

"5.1A Ownership. The parties acknowledge that (a) SV is the owner of all right, title and interest in and to the SV Solely Owned Patent Rights, (b) SV and Licensee jointly own all right, title and interest in and to the Jointly Owned Patent Rights, and (c) SV's interests in the SV Solely Owned Patent Rights and the Jointly Owned Patent Rights are subject to the license granted in Section 2.1."

"5.1B SV Inventors' Assignment Obligations concerning Exhibit B Follow-On Patents and Exhibit B Follow-On Patent Applications. SV shall impose on SV Inventors obligations to assign rights in Exhibit B Follow-On Patents and Exhibit B Follow-On Applications that are no less favorable to Licensee than the obligations SV Inventors bore in connection with their assignments to SV of rights in the Exhibit B Patents and the Exhibit B Patent Applications."

1.5 Exhibit A of the Amended License Agreement is hereby deleted and replaced in its entirety with the following:

"EXHIBIT A"

"SV Solely Owned Patent Rights"

Country	Application No.	Filing Date	Publication No.	Pub. Date	Patent No.	Grant Date
U.S.	12/560,160	9/15/2009	2010-0010531	1/14/2010		
Australia	2005286840	9/21/2005			2005286840	4/26/2012
Australia	2012201926	9/21/2005			2012201926	11/1/2012
Canada	2,581,320	9/21/2005				
Europe	05798758.8	9/21/2005	1811914	8/1/2007		
Japan	2007-533585	9/21/2005	2008-513182	5/1/2008	5009158	6/8/2012

1.6 An Exhibit B is added to read as follows:

"EXHIBIT B"

"Jointly Owned Patent Rights"

Country	Application No.	Filing Date	Publication No.	Pub. Date	Patent No.	Grant Date
U.S.	13/313,904	12/7/2011	2012-0078284	3/29/2012	8,394,118	3/12/2013
U.S.	13/313,919	12/7/2011	2012-0078366	3/29/2012	8,617,198	12/31/2013
U.S.	12/973,693	12/20/2010	2011-0152913	6/23/2011		
Australia	2010330722	12/20/2010				
Canada	2,821,854	12/20/2010				
Europe	10838349.8	12/20/2010	2512361	10/24/2012		
Hong Kong	10838349.8	12/20/2010	2512361	10/24/2012		
Japan	2012-544944	12/20/2010	2013-514840	5/2/2013		

2. Miscellaneous

2.1 Full Force and Effect. This Third Amendment amends the terms of the Amended Licensed Agreement and is deemed incorporated into the Amended License Agreement. Where the Amended License Agreement is not explicitly amended, the terms of the Agreement will remain in full forth and effect. Capitalized terms used in this Amendment that are not otherwise defined herein shall have the meanings such terms are given in the Amended License Agreement.

2.2 Entire Agreement. The Amended License Agreement and this Third Amendment constitute the entire agreement, both written and oral, between the parties with respect to the subject matter hereof, and any and all prior agreements with respect to the subject matter hereof, either written or oral, expressed or implied, are superseded hereby, merged and canceled, and are null and void and of no effect.

2.3 Counterparts. This Amendment may be executed in one or more counterparts, each of which will be an original and all of which together will constitute one instrument.

IN WITNESS WHEREOF, SV and Licensee have executed this Amendment by their respective duly authorized representatives.

SHALON VENTURES, INC.

By: 

Name: Tadmor Shalon
Title: CEO

AIRXPANDERS, INC.

By: 

Name: Scott Dodson
Title: President and CEO

Exhibit 10.11

STANDARD INDUSTRIAL LEASE

BY AND BETWEEN

MCCANDLESS LIMITED

AS LANDLORD

AND

AIRXPANDERS, INC.

AS TENANT

California Industrial Lease Form

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LEASE

THIS LEASE is made this 14th day of July, 2010, by and between McCandless Limited, LLC, a California limited liability company, ("Landlord") and AirXpanders, Inc., a Delaware corporation ("Tenant").

W I T N E S S E T H:

Landlord leases to Tenant and Tenant leases from Landlord those certain premises outlined on Exhibit A (the "Premises") commonly known as 1047 Elwell Court, Palo Alto, California, which Landlord and Tenant hereby agree consists of approximately eight thousand six hundred and fifty (8,650) square feet in 1047 - 1049 Elwell Court, Palo Alto, California (the "Project"). As used herein the term Project shall mean and include all of the land described in Exhibit B and all the buildings, improvements, fixtures and equipment now or hereafter situated on said land.

Tenant covenants, as a material part of the consideration of this lease, to perform and observe each and all of the terms, covenants and conditions set forth below, and this lease is made upon the condition of such performance and observance.

1. USE

Subject to the restrictions contained in paragraph 6 hereof, Tenant shall use the Premises for research and development, general office and administrative uses, shipping and receiving, and light manufacturing and assembly. Tenant shall not use or permit the Premises to be used for any other purpose.

2. TERM

(a) The term shall be for three (3) years (unless sooner terminated as hereinafter provided) and, subject to paragraphs 3(a) and 3(b), shall commence on the later of (i) completion of the Tenant Improvements (as defined in Exhibit "C" of this lease) and (ii) August 1, 2010, and end on the last day of the thirty-sixth (36th) month after the date of commencement of the term, unless terminated sooner in accordance with the terms of this lease.

(b) Tenant may, at its option, take early possession of the Premises once Landlord and Tenant have executed and delivered this lease. Notwithstanding such early possession, Tenant shall not be required to pay basic rent or operating costs prior to the commencement of the term. Tenant's possession of the Premises pursuant to this paragraph shall be subject to all the terms and conditions of this lease. If Tenant exercises its right to take early possession of the Premises pursuant to this paragraph, Tenant shall not interfere with Landlord's construction of the Tenant Improvements and Landlord shall not be liable for any interference with Tenant's business which may result during the period in which improvements are being made to the Premises. Prior to taking possession of the Premises, Tenant shall provide Landlord with proof that Tenant has satisfied Tenant's insurance requirements as set forth in paragraph 11 of this lease.

3. POSSESSION

(a) If Landlord for any reason cannot deliver possession of the Premises to Tenant by August 1, 2010, this lease shall not be void or voidable, Landlord shall not be liable to Tenant for any loss or damage on account thereof and Tenant shall not be liable for rent until Landlord delivers possession of the Premises. If the term commences on a date other than August 1, 2010, , then the parties shall immediately execute an amendment to this lease stating the actual date of commencement and the revised expiration date. The expiration date of the term shall be extended by the same number of days that Tenant's possession of the Premises was delayed past August 1, 2010.

(b) Tenant's inability or failure to take possession of the Premises when delivery is tendered by Landlord shall not delay the commencement of the term of this lease or Tenant's obligation to pay rent. Tenant acknowledges that Landlord shall incur significant expenses upon the execution of this lease, even if Tenant never takes possession of the Premises, including without limitation brokerage commissions and fees and legal and other professional fees. Tenant acknowledges that all of said expenses shall be included in measuring Landlord's damages should Tenant breach the terms of this lease.

4. MONTHLY RENT

(a) Basic Rent. Tenant shall pay to Landlord basic rent for the Premises, as follows:

Months	SF	Rent/SF/NNN/Mo.	Mo. Basic Rent
01 - 08	6,800	$ 0.95	$ 6,460.00
09 - 12	8,650	$ 0.95	$ 8,217.50
13 - 24	8,650	$ 1.00	$ 8,650.00
25 - 36	8,650	$ 1.05	9,082.50

Basic Rent shall be paid in advance and on or before the first day of the first full calendar month of the term and on or before the first day of each and every successive calendar month. Basic rent for any partial month shall be payable in advance and shall be prorated at the rate of 1/ 30th of the monthly basic rent per day.

(b) Operating Costs. In addition to the above basic rent, and as additional rent, Tenant shall pay to Landlord, subject to adjustments and reconciliation as provided in paragraph 16 of this lease, on or before the first day of the first full calendar month of the term and on the first day of each and every succeeding calendar month, Tenant's percentage share of operating costs as provided for in paragraph 16 of this lease. Payment of operating costs for any partial month shall be payable in advance and shall be prorated at the rate of 1/30th of the monthly payment of common area charges per day. Landlord's estimate for operating costs for the first month of the term of this lease is Two Thousand Nine Hundred and Twenty-Eight and 00/100 Dollars ($2,928.00).

(c) Manner and Place of Payment. All payments of basic rent, operating costs and all other additional rent shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America, at the office of Landlord at 360 S. San Antonio Road, Suite 14, Los Altos, California 94022 or to such other person or place as Landlord may from time to time designate in writing.

(d) First Month's Rent. Concurrently with Tenant's execution of this lease, Tenant shall deposit with Landlord, the sum of Nine Thousand Three Hundred and Eighty-Eight and 00/100 Dollars ($9,388.00), to be applied against the basic rent and operating costs for the first lease month of the term.

(e) Security Deposit. Concurrently with Tenant's execution of this lease, Tenant shall deposit with Landlord the sum of Twelve Thousand Ten and 50/100 Dollars ($12,010.50), which sum shall be held by Landlord as a security deposit for the faithful performance by Tenant of all of the terms, covenants and conditions of this lease to be kept and performed by Tenant. If Tenant defaults with respect to any provision of this lease, including but not limited to, the provisions relating to the payment of basic rent and common area charges, Landlord may (but shall not be required to) use, apply, or retain all or any part of this security deposit for the payment of any amount which Landlord may spend by reason of Tenant's default or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of default. If any portion of said deposit is so used, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in the amount sufficient to restore the security deposit to its original amount; Tenant's failure to do so shall be a material breach of this lease. Landlord shall not be required to keep this security deposit separate from its general funds and Tenant shall not be entitled to interest on such deposit. If Tenant is not in default at the expiration or termination of this lease, the security deposit or any balance thereof shall be returned to Tenant after Tenant has vacated the Premises. In the event of termination of Landlord's interest in this lease, Landlord shall transfer said deposit to Landlord's successor in interest, and Tenant agrees that Landlord shall thereupon be released from liability for the return of such deposit or any accounting therefor.

5. INTENTIONALLY DELETED.

6. RESTRICTION ON USE

Tenant shall not do or permit to be done in or about the Premises or the Project, nor bring or keep or permit to be brought or kept in or about the Premises or Project, anything which is prohibited by or will in any way increase the existing rate of, or otherwise affect, fire or any other insurance covering the Project or any part thereof, or any of its contents, or will cause a cancellation of any insurance covering the Project or any part thereof, or any of its contents. Tenant shall not do or permit to be done anything in or about the Premises or the Project which will constitute waste or which will in any way obstruct or interfere with the rights of other tenants, business invitees or occupants of the Project or injure or annoy them, or use or allow the Premises to be used for any unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in or about the Premises or the Project. No loudspeaker or other device, system or apparatus which can be heard outside the Premises shall be used in or at the Premises without the prior written consent of Landlord. Tenant shall not use the Premises for the preparation, or mixing of anything that might emit any objectionable odor, noise or light into the adjoining premises or Common Area. Tenant shall not do anything on the Premises that will cause damage to the Project and Tenant shall not overload the floor capacity of the Premises or the Project. No machinery, apparatus or other appliance shall be used or operated in or on the Premises that will in any manner injure, vibrate or shake the Premises. Landlord shall be the sole judge, of whether such odor, noise, light or vibration is such as to violate the provisions of this paragraph. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Premises or the Project except in trash containers placed inside exterior enclosures designated for that purpose by Landlord, or where otherwise designated by Landlord; and no toxic or hazardous materials shall be disposed of through the plumbing or sewage system. No materials,

supplies, equipment, finished products or semi-finished products, raw materials or articles of any nature shall be stored or permitted to remain outside of the building proper. No retail sales shall be made on the Premises.

7. COMPLIANCE WITH LAWS

Landlord shall deliver the Premises to Tenant in compliance with all applicable laws, statutes, ordinances, building codes and governmental rules, regulations and requirements now in effect. From and after the commencement of the term of this lease, Tenant shall, in connection with its use and occupation of the Premises, at its sole cost and expense, promptly observe and comply with (i) all laws, statutes, ordinances, building codes and governmental rules, regulations and requirements now or hereafter in effect, including laws now or hereafter enacted requiring structural modification to the Premises or the Common Areas as a result of the specific use of the Premises by Tenant or its employees, invitees, contractors or successors, (ii) with the requirements of any board of fire underwriters or other similar body now or hereafter constituted and (iii) with any direction or occupancy certificate issued pursuant to law by any public authority; provided, however, that no such failure shall be deemed a breach of these provisions if Tenant, immediately upon notification, commences forthwith to remedy or rectify said failure. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant (whether or not Landlord is a party thereto) that Tenant has violated any such law, statute, ordinance or governmental rule, regulation, requirement, direction or provision, shall be conclusive of that fact as between Landlord and Tenant. This lease shall remain in full force and effect notwithstanding any loss of use or other effect on Tenant's enjoyment of the Premises by reason of any governmental laws, statutes, ordinances, rules, regulations and requirements now or hereafter in effect.

Without limiting the generality of the foregoing, Landlord and Tenant hereby acknowledge that the Americans with Disabilities Act and Title 24 of the Code of California Regulations may affect Tenant's use and occupancy of the Premises and require Tenant to modify or alter the design, layout or other physical elements of the interior of the Premises or provide auxiliary aids and services in connection with its business operations. From and after the commencement date of the term, Tenant shall, at Tenant's sole cost and expense, comply in all respects with the requirements of the Americans with Disabilities Act and Title 24 of the Code of California Regulations as it affects Tenant's particular use and occupancy of the Premises throughout the term of the lease, as may be extended, including payment of all structural modifications and other compliance costs necessitated by Tenant's occupancy and use of the Premises, Tenant acknowledges and agrees that, Landlord makes no representations or warranties regarding the compliance of the Premises or the Project with the Americans with Disabilities Act and Title 24 of the Code of California Regulations, except as otherwise set forth herein, nor shall Landlord have any obligations or liabilities to Tenant to construct any modifications or alterations to the interior of the Premises necessitated by Tenant's use or occupancy of the Premises in order to comply with the Americans with Disabilities Act and Title 24 of the Code of California Regulations.

8. ALTERATIONS

Tenant shall not make or suffer to be made any alteration, addition or improvement to or of the Premises or any part thereof (collectively referred to herein as "alterations") without (i) the prior written consent of Landlord, (ii) a valid building permit issued by the appropriate governmental authority and (iii) otherwise complying with all applicable laws, regulations and requirements of governmental agencies having jurisdiction and with the rules, regulations and requirements of any board of fire underwriters or similar body. Notwithstanding the foregoing, Tenant shall have the right, without Landlord's prior written consent, to make any alteration that is decorative only (e.g., carpet installation, painting, decorating, shelving that is not permanently fixed, and the like), provided all such decorative non-structural alterations do not in any single case exceed Five Thousand Dollars ($5,000.00). Any alteration made by Tenant (excluding moveable furniture and trade fixtures not attached to the Premises) shall at once become a part of the Premises and belong to Landlord. Without limiting the foregoing, all heating, lighting, electrical (including all wiring, conduit, outlets, drops, buss ducts, main and subpanels), air conditioning, partitioning, drapery and carpet installations made by Tenant, regardless of how attached to the Premises, together with all other alterations that have become an integral part of the Project in which the Premises are a part, shall be and become part of the Premises and belong to Landlord upon installation and shall not be deemed trade fixtures, and shall remain upon and be surrendered with the Premises at the termination of the lease.

If Landlord consents to the making of any alteration by Tenant, the same shall be made by Tenant at its sole risk, cost and expense and only after Landlord's written approval of any contractor or person selected by Tenant for that purpose, and the same shall be made at such time and in such manner as Landlord may from time to time designate. At the time Landlord gives its consent to any alteration, Landlord shall advise Tenant whether such alteration must be removed upon the expiration sooner termination of the lease. Upon the expiration or sooner termination of the term, Tenant, at Tenant's sole cost and expense, shall promptly both remove any such alteration made by Tenant and designated by Landlord to be removed at the time consent was given thereto and repair any damage to the Premises caused by such removal. Any moveable furniture and equipment or trade fixtures remaining on the Premises at the expiration or other termination of the term shall become the property of the Landlord unless promptly removed by Tenant.

If during the term, and subject to paragraph 7 above, any alteration, addition or change of the interior non-structural portions of the Premises is required by law, regulation, ordinance or order of any public or quasi-public authority, Tenant, at its sole cost and expense, shall promptly make the same. If during the term any alterations, additions or changes to the structural components of the Premises, the Common Area or to the Project in which the Premises is located is required by law, regulation, ordinance or order of any public or quasi-public authority, Landlord shall make such alterations, additions or changes and the cost thereof shall be a operating cost and Tenant shall pay its percentage share of such operating cost to Landlord as provided in paragraph 16.

9. REPAIR AND MAINTENANCE

Except as expressly provided below, Tenant shall at its sole cost keep and maintain the entire Premises and every part thereof including, without limitation, the windows, window frames, plate glass, glazing, elevators within the Premises, truck doors, doors and all door hardware, the interior walls and partitions, lighting and the electrical, mechanical, and plumbing systems within the Premises. Tenant shall also repair and maintain the heating and air conditioning systems serving the Premises (unless Landlord has elected to keep and maintain the heating and air conditioning systems as provided below) which shall include, without limitation, a periodic maintenance agreement with a reputable and licensed heating and air conditioning service company. If Tenant's use of the heating and air conditioning systems is limited to normal business hours (8:00 a.m. to 6:00 p.m.), such agreement shall provide for service at least as often as every 60 days; if Tenant's use of the heating or air conditioning systems extends beyond such normal business hours this service shall be as often as may be required by Landlord and in any event such service shall meet all warranty enforcement requirements of such equipment and comply with all manufacturer recommended maintenance. Landlord may elect, at its option, to keep and maintain the heating and air conditioning systems of the Premises and in such event, Tenant shall pay to Landlord upon demand the full cost of such maintenance.

Subject to the provisions of paragraphs 16 and 17, Landlord shall keep and maintain the roof, structural elements, and exterior walls of the Premises, the buildings constituting the Project and Common Area in good order and repair. Tenant waives all rights under and benefits of California Civil Code Sections 1932(1), 1941, and 1942 and under any similar law, statute or ordinance now or hereafter in effect. The cost of the repairs and maintenance which are the obligation of Landlord hereunder, including without limitation, maintenance contracts and supplies, materials, equipment and tools used in such repairs and maintenance shall be an operating cost and Tenant shall pay its percentage share of such operating costs to Landlord as provided in paragraph 16; provided, however, that if any repairs or maintenance is required because of an act or omission of Tenant, or its agents, employees or invitees, Tenant shall pay to Landlord upon demand the full cost of such repairs or maintenance.

Notwithstanding anything to the contrary herein, Landlord shall deliver the Premises with the roof, foundations, structural elements, air conditioning and heating (HVAC) system, lighting and electrical systems, and plumbing system in good working order and repair as of the commencement date of the term.

10. LIENS

Tenant shall keep the Premises and the Project free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant, its agents, employees or contractors. Upon Tenant's receipt of a preliminary twenty (20) day notice filed by a claimant pursuant to California Civil Code Section 3097, Tenant shall immediately provide Landlord with a copy of such notice. Should any such lien be filed against the Project, Tenant shall give immediate notice of such lien to Landlord. In the event that Tenant shall not, within ten (10) days following the imposition of such lien, cause the same to be released of record, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but no obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All sums paid by Landlord for such purpose, and all expenses (including attorneys' fees) incurred by it in connection therewith, shall be payable to Landlord by Tenant on demand with interest at the rate of ten percent (10%) per annum or the maximum rate permitted by law, whichever is less. Landlord shall have the right at all times to post and, keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper for the protection of Landlord, the Premises and the Project and any other party having an interest therein, from mechanics' and material men's liens and like liens. Tenant shall give Landlord at least fifteen (15) days prior notice of the date of commencement of any construction on the Premises in order to permit the posting of such notices. In the event Tenant is required to post an improvement bond with a public agency in connection with any work performed by Tenant on or to the Premises, Tenant shall include Landlord as an additional obligee.

11. INSURANCE

Tenant, at its sole cost and expense, shall keep in force during the term (i) comprehensive general liability and property damage insurance with a combined single limit of at least $2,000,000 per occurrence insuring against personal or bodily injury to or death of persons occurring in, on or about the Premises or Project and any and all liability of the insured with respect to, the Premises or arising out of Tenant's maintenance, use or occupancy of the Premises and all areas appurtenant thereto, (ii) direct physical loss-special insurance covering the leasehold improvements in the Premises and all of Tenant's equipment, trade fixtures, appliances, furniture, furnishings, and personal property from time to time located in, on or about the Premises, with coverage in the amount of the full replacement cost thereof, (iii) Worker's Compensation Insurance as required by law, together with employer's liability coverage with a limit of not less than $1,000,000 for bodily injury for each accident and for bodily injury by disease for each employee. Tenant's commercial general liability and property damage insurance and Tenant's Workers Compensation Insurance shall be endorsed to provide that said insurance shall not be canceled or reduced except upon at least thirty (30) days prior written notice to Landlord and (iv) full replacement cost plate glass insurance. Further, Tenant's comprehensive general liability and property damage insurance shall be primary and shall name Landlord and McCandless Simons Company, Inc., and their respective partners, officers, directors and employees and such other persons or entities as directed from time to time by Landlord as additional insured for all liability using ISO Bureau Form CG20111185 (or a successor form); shall contain a severability of interest clause and a cross-liability endorsement; shall be endorsed to provide that the limits and aggregates apply per location using ISO Bureau Form CG25041185; and shall be issued by an insurance company admitted to transact business in the State of California and rated A+ XII or better in Best's Insurance Reports (or successor report). The deductibles for all insurance required to be maintained by Tenant hereunder shall be no more than $2,000 per occurrence. The comprehensive general liability insurance carried by Tenant shall specifically insure the performance by Tenant of the indemnification provisions set forth in paragraph 18 of this lease provided, however, nothing contained in this paragraph 11 shall be construed to limit the liability of Tenant under the indemnification provisions set forth in said paragraph 18. If Landlord or any of the additional insured named on any of Tenant's insurance, have other insurance which is applicable to the covered loss on a contributing, excess or contingent basis, the amount of the Tenant's insurance company's liability under the policy of insurance maintained by Tenant shall be primary and shall not be reduced by the existence of such other insurance. Any insurance carried by Landlord or any of the additional insured named on Tenant's insurance policies shall be excess and non-contributing with the insurance so provided by Tenant.

Tenant shall, prior to the commencement of the term, provide Landlord with a completed Certificate of Insurance, using a form acceptable in Landlord's reasonable judgment, attaching thereto copies of all endorsements required to be provided by Tenant under this lease. Tenant agrees to increase the coverage or otherwise comply with changes in connection with said commercial general liability, property damage, direct physical loss and Worker's Compensation Insurance as Landlord or Landlord's lender may from time to time reasonably require (but not more than once every calendar year).

Landlord shall obtain and keep in force a policy or policies of insurance covering loss or damage to the Premises and Project, in the amount of the full replacement value thereof, providing protection against those perils included within the classification of "all risk" insurance, with increased cost of reconstruction and contingent liability (including demolition), plus a policy of rental income insurance in the amount of one hundred percent (100%) of twelve (12) months' rent (including sums paid as additional rent) and such other insurance as Landlord or Landlord's lender may from time to time require. Landlord may, but shall not be obligated to, also obtain flood and/or earthquake insurance. Landlord shall have no liability to Tenant if Landlord elects not to obtain flood and/or earthquake insurance. The cost of all such insurance purchased by Landlord, plus any charges for deferred payment of premiums and the amount of any deductible incurred upon any covered loss within the Project, shall be operating costs and Tenant shall pay to Landlord its percentage share of such operating costs as provided in paragraph 16 (but excluding any portion of any single deductible that exceeds One Hundred Thousand Dollars ($100,000) for repair of structural items of the buildings in Project that are otherwise the responsibility of Landlord to maintain hereunder; provided that the portion of such deductible that constitutes operating costs shall be amortized over the average of the useful lives of the items so repaired, in accordance with generally accepted accounting principles).

Landlord and Tenant hereby mutually waive any and all rights of recovery against one another for real or personal property loss or damage occurring to the Premises or the Project, or any part thereof, or to any personal property therein, from perils insured against under fire and extended insurance and any other property insurance policies existing for the benefit of the respective parties so long as such insurance permits waiver of liability and contains a waiver of subrogation without additional premiums.

If Tenant does not take out and maintain insurance as required pursuant to this paragraph 11, Landlord may, but shall not be obligated to, take out the necessary insurance and pay the premium therefor, and Tenant shall repay to Landlord promptly on demand, as additional rent, the amount so paid. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as additional rent, any

and all reasonable expenses (including attorney fees) and damages which Landlord may sustain by reason of the failure of Tenant to obtain and maintain such insurance, it being expressly declared that the expenses and damages of Landlord shall not be limited to the amount of the premiums thereon.

12. UTILITIES AND SERVICE

Tenant shall pay for all water, gas, light, heat, power, electricity, telephone, trash pickup, sewer charges and all other services supplied to or consumed on the Premises. In the event that any service is not separately metered or billed to the Premises, the cost of such utility service or other service shall be an operating cost and Tenant shall pay its percentage share of such operating cost to Landlord as provided in paragraph 16. In addition, the cost of all utilities and services furnished by Landlord to the Common Area shall be an operating cost and Tenant shall pay its percentage share of such operating cost to Landlord as provided in paragraph 16.

If Tenant's use of any such utility or service is materially in excess of the average furnished to the other tenants of the Project, and such utility or service is not separately metered, then Tenant shall pay to Landlord upon demand, as additional rent, the full cost of such excess use, or Landlord may cause such utility or service to be separately metered, in which case Tenant shall pay the full cost of such utility or service and reimburse Landlord upon demand for the cost of installing the separate meter.

Landlord shall not be liable for, and Tenant shall not be entitled to any abatement or reduction of rent by reason of, the failure of any person or entity to furnish any of the foregoing services when such failure is caused by accident, breakage, repairs, strikes, lockouts or other labor disturbances or labor disputes of any character, governmental moratoriums, regulations or other governmental actions, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord. In addition, Tenant shall not be relieved from the performance of any covenant or agreement in this lease because of any such failure, and no eviction of Tenant shall result from such failure.

13. TAXES AND OTHER CHARGES

All real estate taxes and assessments and other taxes, fees and charges of every kind or nature, foreseen or unforeseen, which are levied, assessed or imposed upon Landlord and/or against the Premises, Building, Common Area or Project, or any part thereof by any federal, state, county, regional, municipal or other governmental or quasi-public authority, together with any increases therein for any reason, shall be an operating cost and Tenant shall pay its percentage share of such operating costs to Landlord as provided in paragraph 16. By way of illustration and not limitation, "other taxes, fees and charges" as used herein include any and all taxes payable by Landlord (other than state and federal personal or corporate income taxes measured by the net income of Landlord from all sources, gift, estate and inheritance taxes, transfer taxes, and premium taxes), whether or not now customary or within the contemplation of the parties hereto, (i) upon, allocable to, or measured by the rent payable hereunder, including, without limitation, any gross income or excise tax levied by the local, state or federal government with respect to the receipt of such rent, (ii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any part thereof, (iii) upon or measured by the value of Tenant's personal property or leasehold improvements located in the Premises, (iv) upon this transaction or any document to which Tenant is a party creating or transferring an interest or estate in the Premises, (v) upon or with respect to vehicles, parking or the number of persons employed in or about the Project, and (vi) any tax, license, franchise fee or other imposition upon Landlord which is otherwise measured by or based in whole or in part upon the Project or any portion thereof. If Landlord contests any such tax, fee or charge, the cost and expense incurred by Landlord thereby (including, but not limited to, costs of attorneys and experts) shall also be operating costs and Tenant shall pay its percentage share of such operating costs to Landlord as provided in paragraph 16. In the event the Premises and any improvements installed therein by Tenant or Landlord are valued by the assessor disproportionately higher than those of other tenants on the building or Project or in the event alterations or improvements are made to the Premises, Tenant's percentage share of such taxes, assessments, fees and/ or charges shall be readjusted upward accordingly and Tenant agrees to pay such readjusted share. Such determination shall be made by Landlord from the respective valuations assigned in the assessor's work sheet or such other information as may be reasonably available and Landlord's reasonable determination thereof shall be conclusive.

Tenant agrees to pay, before delinquency, any and all taxes levied or assessed during the term hereof upon Tenant's equipment, furniture, fixtures and other personal property located in the Premises, including carpeting and other property installed by Tenant notwithstanding that such carpeting or other property has become a part of the Premises. If any of Tenant's personal property shall be assessed with the Project, Tenant shall pay to Landlord, as additional rent, the amount attributable to Tenant's personal property within ten (10) days after receipt of a written statement from Landlord setting forth the amount of such taxes, assessments and public charges attributable to Tenant's personal property.

14. ENTRY BY LANDLORD

Landlord reserves, and shall, at all reasonable times and upon at least twenty-four (24) hours prior notice to Tenant, have the right to enter the Premises (i) to inspect the Premises, (ii) to supply services to be provided by Landlord hereunder, (iii) to show the Premises to prospective purchasers, lenders or tenants and to put 'for sale' or 'for lease' signs thereon, (iv) to post notices required or allowed by this lease or by law, (v) to alter, improve or repair the Premises and any portion of the Project, and (vi) to erect scaffolding and other necessary structures in or through the Premises or the Project where reasonably required by the character of the work to be performed. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising from Landlord's entry and acts pursuant to this paragraph and Tenant shall not be entitled to an abatement or reduction of rent if Landlord exercises any rights presented in this paragraph. For each of the foregoing purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, on and about the Premises (excluding Tenant's vaults, safes and similar areas designated in writing by Tenant in advance), and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Premises. Any entry by Landlord to the Premises pursuant to this paragraph 14 shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Premises or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof.

15. COMMON AREA; PARKING

Subject to the terms and conditions of this lease and such rules and regulations as Landlord may from time to time prescribe and so long as such rules and regulations do not conflict with the terms and conditions of this lease, Tenant and Tenant's employees and invitees, at no additional cost to Tenant, shall, in common with other occupants of the Project, and their respective employees and invitees and others entitled to the use thereof, have the non-exclusive right to use the access roads, parking areas and facilities within the Project provided and designated by Landlord for the general use and convenience of the occupants of the Project which areas and facilities shall include, but not be limited to, sidewalks, parking, refuse, landscape and plaza areas, roofs and building exteriors, which areas and facilities are referred to herein as "Common Area". This right shall terminate upon the termination of this lease.

Landlord reserves the right from time to time to make changes in the shape, size, location, amount and extent of the Common Area, provided that Landlord shall use reasonable efforts to minimize any interference with Tenant's business caused by such changes and the construction thereof. Landlord shall also have the right at any time to change the name, number or designation by which the Project is commonly known. Landlord further reserves the right to promulgate such rules and regulations relating to the use of the Common Area, and any part thereof, as Landlord may deem appropriate for the best interests of the occupants of the Project. The rules and regulations shall be binding upon Tenant upon delivery of a copy of them to Tenant and Tenant shall abide by them and cooperate in their observance. Such rules and regulations may be amended by Landlord from time to time, with or without advance notice.

Tenant shall have the non-exclusive use of twenty-six (26) parking spaces in the Common Area as designated from time to time by Landlord. Landlord reserves the right at its sole option to assign and label parking spaces, but it is specifically agreed that Landlord is not responsible for policing any such parking spaces. Tenant shall not at any time park or permit the parking of Tenant's trucks or other vehicles, or the trucks or other vehicles of others, adjacent to loading areas so as to interfere in any way with the use of such areas; nor shall Tenant at any time park or permit the parking of Tenant's vehicles or trucks, or other vehicles or trucks of Tenant's suppliers or others, in any portion of the Common Area not designated by Landlord for such use by Tenant. Tenant shall not park or permit any inoperative vehicle or equipment to be parked on any portion of the Common Area. Tenant shall not permit, allow or place any type of circulars or advertisements on vehicles parking in the Common Area. Tenant shall not use any Common Area, including the space directly adjacent to the Premises for sales or displays.

Landlord shall operate, manage and maintain the Common Area. The manner in which the Common Area shall be operated, managed and maintained and the expenditures for such operation, management and maintenance shall be at the sole discretion of Landlord. The cost of such maintenance, operation and management of the Common Area, including but not limited to landscaping, repair of paving, parking lots and sidewalks, repaving, resurfacing, repairs, replacements, painting, lighting, cleaning, trash removal, roof replacement and repair, heating, ventilating and air-conditioning repair and replacement, fire protection and similar items; non-refundable contributions toward one or more reserves for replacements other than equipment; rental on equipment; security and exterminator services and salaries and employee benefits (including union benefits) of on-site and accounting personnel engaged in such maintenance and operations management, shall be an operating cost and Tenant shall pay to Landlord its percentage share of such operating costs as provided in paragraph 16.

16. OPERATING COSTS

Tenant shall pay to Landlord, as additional rent, Tenant's percentage share, equal to fifty-five and fifty-two one hundredth percent (55.52%), of the total operating costs as defined below. Tenant's percentage share of operating costs shall be paid by Tenant as follows:

Tenant's estimated monthly payment of operating costs payable by Tenant during the calendar year in which the term commences is set forth in paragraph 4(b) of this lease. Prior to the commencement of each succeeding calendar year of the term (or as soon as practicable thereafter), Landlord shall deliver to Tenant a written estimate of Tenant's monthly payment of operating costs. Tenant shall pay, as additional rent, on the first day of each month during the term in accordance with paragraph 4(b) of the lease, its monthly share of operating costs as estimated by Landlord. Within one hundred twenty (120) days of the end of each calendar year and of the termination of this lease (or as soon as practicable thereafter), Landlord shall deliver to Tenant a statement of actual operating costs incurred for the preceding year. If such statement shows that Tenant has paid less than its actual percentage then Tenant shall on demand pay to Landlord the amount of such deficiency. If Tenant fails to pay such deficiency due within ten (10) days after demand, Tenant shall pay an additional ten percent (10%) of the amount due as a penalty. If such statement shows that Tenant has paid more than its actual percentage share then Landlord shall, at its option, promptly refund such excess to Tenant or credit the amount thereof to the operating costs next becoming due from Tenant. Landlord reserves the right to revise any estimate of operating costs if actual or projected operating costs show an increase or decrease in excess of 10% from any earlier estimate for the same period; provided, however, Landlord shall make no more than two (2) such adjustments per calendar year. In such event, Landlord shall deliver the revised estimate to Tenant, together with an explanation of the reasons therefor, and Tenant shall revise its payments accordingly. Landlord's and Tenant's obligation with respect to adjustments at the end of the term or earlier expiration of this lease shall survive such termination or expiration.

"Operating costs" means the total amounts paid or payable, whether by Landlord or others on behalf of Landlord, in connection with the ownership, maintenance, repair and operations of the Project (including, without limitation, all areas and facilities within the exterior boundaries of the Project) as determined by standard accounting procedures. Operating costs shall include, but not be limited to, code compliance costs described in paragraph 8, above; roof and other structural repair costs, described in paragraph 9, above; Landlord's insurance described in paragraph 11, above; utilities described in paragraph 12, above; taxes and assessments described in paragraph 13, above; common area costs described in paragraph 15, above; the aggregate of the amount paid for all fuel used in heating and air conditioning of the Project; the amount paid or payable for all electricity furnished by Landlord to the Project (other than electricity furnished to and paid for by other lessees by reason of separate metering or their extraordinary consumption of electricity); the cost of periodic relamping and reballasting of lighting fixtures; the amount paid or payable for all hot and cold water; the amount paid or payable for all labor and/ or wages and other payments including cost to Landlord of worker's compensation and disability insurance, payroll taxes, welfare and fringe benefits made to janitors, caretakers, and other employees, contractors and subcontractors of Landlord (including wages of the Project manager) involved in the operation, maintenance and repair of the Project; painting for exterior walls of the buildings in the Project; managerial and administrative expenses; the total charges of any independent contractors employed in the repair, care, operation, maintenance, and cleaning of the Project; the amount paid or payable for all supplies occasioned by everyday wear and tear; the costs of climate control, window and exterior wall cleaning, telephone and utility costs; the cost of accounting services necessary to compute the rents and charges payable by lessees and keep the books of the Project; fees for management, legal, accounting, inspection and consulting services; the cost of operating, repairing and maintaining the Project's directory board; payments for general maintenance and repairs to the plant and equipment supplying climate control; amortization of the costs, including repair and replacement, of all maintenance and cleaning equipment and master utility meters and of the costs incurred for repairing or replacing all other fixtures, equipment and facilities serving or comprising the Project which by their nature require periodic or substantial repair or replacement, and which are not charged fully in the year in which they are incurred, at rates on the various items determined from time to time by Landlord in accordance with sound accounting principles; and community association dues or assessments and property owner's association dues and assessments which may be imposed upon Landlord by virtue of any recorded instrument affecting title to the Project. Operating costs shall also include, without limitation, the repair and replacement, resurfacing and/or repaving of any paved areas, curbs or gutters within the Project, the repair and replacement of any equipment, facilities or utility systems serving or located within the Project costs to comply with future enacted laws that are not the obligation of Tenant under paragraph 7, above, and the cost of any other capital repairs, replacements or improvements made by the Landlord to the Project ("Capital Costs"). However, certain Capital Costs shall be includable in operating costs each year only to the extent of that fraction allocable to the year in question calculated by amortizing such Capital Cost over the reasonably useful life of the improvement resulting therefrom, as determined by Landlord, with interest on the unamortized balance at the higher of (i) ten percent (10%) per annum; or (ii) the interest rate as may have been paid by Landlord for the funds borrowed for the purpose of performing the work for which the Capital Costs have been expended, but in no event to exceed the highest rate permissible by law. The Capital Costs subject to such amortization procedure are restricted to the following two categories: (a) replacement or improvement of roof, walls, foundation, exterior walls, demising walls, HVAC systems, electrical systems, plumbing systems and/or other utility systems; (b) those other costs for capital improvements to the Project of a type which do not normally recur more

frequently than every three (3) years in the normal course of operation and maintenance of facilities such as the Project; and (c) costs incurred for the purpose of reducing other operating expenses or utility costs, from which Lessee can expect a reasonable benefit, or that are required by governmental law, ordinance, regulation or mandate, not applicable to the Project at the time of the original construction and not the obligation of Tenant hereunder.

Notwithstanding the foregoing, operating costs shall not include any leasing commissions; expenses that relate to preparation of rental space for a tenant or for services rendered to or for the benefit of other tenants; expenses relating to other tenants; other costs incurred for the account of specific tenants, including, without limitation, such expenses that are separately billed to and paid by specific tenants (but not as part of Operating Expenses); costs of repairs and capital expenditures to the extent reimbursed by payment of insurance proceeds or warranties received by Landlord; rent and any other amounts due under any ground lease; loan fees in connection and any interest upon loans to Landlord or secured by a mortgage or deed of trust covering the Project or a portion thereof; salaries of executive officers of Landlord; depreciation claimed by Landlord for tax purposes; any fine, interest, penalties or cost of compliance incurred by Landlord (and attorneys' fees relating thereto) as a result of Landlord's violation of any applicable laws; any costs, fines or penalties incurred due to the breach of this lease or any other lease in the Project by Landlord; the cost to remediate, remove or otherwise comply with Environmental Requirements relating to Hazardous Materials (each as defined below) to the extent Hazardous Materials were present upon, in or about the Premises or Project prior to the commencement date of the term or were subsequently brought onto the Premises or Project by Landlord or its officers, assignees, concessionaires, licensees, agents, employees or contractors; the cost to restore or repair the Premises, Building or Project following a casualty or condemnation to the extent resulting from Landlord's failure to maintain the type and levels of insurance required under this lease; increases in insurance premiums over those in effect on the commencement date to the extent directly caused by the negligence or willful misconduct of Landlord or any of its employees, agents or contractors; Landlord's general overhead expenses not related to the Project; overhead profit increments paid to Landlord's subsidiaries or affiliates for management or other services on or to the Project or for supplies or other materials to the extent that the cost of the services, supplies or materials materially exceeds the cost that would have been paid had the services, supplies or materials been provided by unaffiliated parties on a competitive basis; advertising and promotional expenditures; charitable or political contributions or fees paid to trade associations; and costs for sculpture, paintings or other objects of art (and insurance thereon or extraordinary security in connection therewith).

Within 60 days after receiving Landlord's annual operating cost statement (the "Review Notice Period"), Tenant may give Landlord notice ("Review Notice") stating that Tenant elects to review Landlord's calculation of the operating costs to which such statement applies and identifying with reasonable specificity the records of Landlord reasonably relating to such matters that Tenant desires to review. Within a reasonable time after receiving a timely Review Notice (and, at Landlord's option, an executed confidentiality agreement as described below), Landlord shall deliver to Tenant, or make available for inspection at a location reasonably designated by Landlord, copies of such records. Within 60 days after such records are made available to Tenant (the "Objection Period"), Tenant may deliver to Landlord notice (an "Objection Notice") stating with reasonable specificity any objections to the such statement, in which event Landlord and Tenant shall work together in good faith to resolve Tenant's objections. If Tenant retains an agent to review Landlord's records, the agent must be with a CPA firm licensed to do business in the State of California and its fees shall not be contingent, in whole or in part, upon the outcome of the review. Tenant shall be responsible for all costs of such review; provided, however, that if Landlord and Tenant determine that the operating costs in question were overstated by more than 5%, Landlord, within 30 days after receiving paid invoices therefor from Tenant, shall reimburse Tenant for the reasonable amounts paid by Tenant to third parties in connection with such review. If such audit shows that Tenant has paid more than its actual percentage share then Landlord shall, at its option, promptly refund such excess to Tenant or credit the amount thereof to the operating costs next becoming due from Tenant. If such audit shows that Tenant has paid less than its actual percentage share then Tenant shall pay the deficiency to Landlord within thirty (30) days after delivery of such results.

17. DAMAGE BY FIRE; CASUALTY

In the event the Premises are damaged by any casualty which is fully covered under an insurance policy required to be maintained by Landlord pursuant to paragraph 11, Landlord shall be entitled to the use of all insurance proceeds and shall repair such damage as soon as reasonably possible and this lease shall continue in full force and effect.

In the event the Premises are damaged by any casualty not fully covered under an insurance policy required to be maintained pursuant to paragraph 11, Landlord may, at Landlord's option, either (i) repair such damage, at Landlord's expense, as soon as reasonably possible, in which event this lease shall continue in full force and effect, or (ii) give written notice to Tenant within thirty (30) days after the date of the occurrence of such damages of Landlord's intention to cancel and terminate this lease as of the date of the occurrence of the damages; provided, however, that if such damage is caused by an act or omission

of Tenant or its agent, servants or employees, then Tenant shall repair such damage promptly at its sole cost and expense. In the event Landlord elects to terminate this lease pursuant hereto, Tenant shall have the right within ten (10) days after receipt of the required notice to notify Landlord in writing of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from Landlord, in which event this lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within the ten (10) day period, this lease shall be canceled and terminated as of the date of the occurrence of such damage. Under no circumstances shall Landlord be required to repair any injury or damage to (by fire or other cause), or to make any restoration or replacement of, any of Tenant's personal property, trade fixtures or property leased from third parties, whether or not the same is attached to the Premises.

If the Premises are totally destroyed during the term from any cause (including any destruction required by any authorized public authority), whether or not covered by the insurance required under paragraph 11, this lease shall automatically terminate as of the date of such total destruction; provided, however, that if the Premises can reasonably and lawfully be repaired or restored within six (6) months of the date of destruction to substantially the condition existing prior to such destruction and if the proceeds of the insurance payable to the Landlord by reason of such destruction are sufficient to pay the cost of such repair or restoration, then the insurance proceeds shall be so applied, Landlord shall promptly repair and restore the Premises and this lease shall continue, without interruption, in full force and effect. If the Premises are totally destroyed during the last twelve (12) months of the term, either Landlord or Tenant may at either parties' option cancel and terminate this lease as of the date of occurrence of such damage by giving written notice to the other of its' election to do so within thirty (30) days after the occurrence of such damage.

If the Premises are partially or totally destroyed or damaged and Landlord or Tenant repair them pursuant to this lease, the rent payable hereunder for the period during which such damage and repair continues shall be abated only in proportion to the square footage of the Premises rendered untenantable to Tenant by such damage or destruction. Tenant shall have no claim against Landlord for any damage, loss or expense suffered by reason of any such damage, destruction, repair or restoration or Landlord's election under this paragraph 17 not to repair or restore such damage or destruction. The parties waive the provisions of California Civil Code sections 1932(2) and 1933(4) (which provisions permit the termination of a lease upon destruction of the Premises), and hereby agree that the provisions of this paragraph 17 shall govern in the event of such destruction.

18. INDEMNIFICATION

Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury to or death of any person or damage to or destruction of property in or about the Premises or the Project (including but not limited to damage to person or property caused by water leakage of any character from the roof, walls, ceiling, basement or other portions of the Project or caused by gas, fire, oil, fumes, electricity, steam or land or structural movement) by or from any cause whatsoever except caused by the sole gross negligence of Landlord or its officers, assignees, concessionaires, licensees, agents, employees or contractors. Without limiting the foregoing, Landlord shall not be liable to Tenant for any injury to or death of any person or damages to or destruction of property by reason of, or arising from, any latent defect in the Premises or Project or the act or negligence of any other tenant of the Project. Tenant shall immediately notify Landlord of any defect in the Premises or Project.

Except as to injury to persons or damage to property the sole cause of which is the gross negligence of Landlord or its officers, assignees, concessionaires, licensees, agents, employees or contractors, Tenant shall indemnify and hold Landlord harmless from and defend Landlord against any claim, liability, loss, damage or expense (including attorneys' and experts' fees) arising out of any injury to or death of any person or damage to or destruction of property occurring in, on or about the Premises from any cause whatsoever or on account of the use, condition, occupational safety or occupancy of the Premises. Tenant shall further indemnify and hold Landlord harmless from and defend Landlord against any claim, liability, loss, damage or expense (including reasonable attorney fees) arising (i) from Tenant's use of the Premises or from the conduct of its business or from any activity or work done, permitted or suffered by Tenant or its agents, invitees, contractors or employees in or about the Premises or Project, (ii) out of the failure of Tenant to observe or comply with Tenant's obligation to observe and comply with laws or other requirements as set forth in paragraph 7, (iii) by reason of Tenant's use, handling, storage, or disposal of toxic or Hazardous Materials or waste, (iv) by reason of any labor or service performed for, or materials used by or furnished to, Tenant or any contractor engaged by Tenant with respect to the Premises, or (v) from any other act, neglect, fault or omission of Tenant or its agents, employees, contractors or invitees. The provisions of this paragraph 18 shall survive the expiration or earlier termination of this lease.

19. ASSIGNMENT AND SUBLETTING

Tenant shall not voluntarily assign, encumber or otherwise transfer its interest in this lease or in the Premises, or sublease all or any part of the Premises, or allow any other person, concessionaire or

entity to occupy or use all or any part of the Premises, without first obtaining Landlord's written consent (which consent in the case of assignment or subletting shall not be unreasonably withheld and which consent in all other instances may be withheld by Landlord for any reason or no reason) and otherwise complying with the requirements of this paragraph 19. Any assignment, encumbrance or sublease without Landlord's consent, shall constitute a default.

If Tenant desires to sublet or assign all or any portion of the Premises, Tenant shall give Landlord written notice thereof, specifying the projected commencement date of the proposed sublet or assignment, the portions of the Premises proposed to be sublet or assigned, and the identity of the proposed assignee or subtenant. Tenant shall further provide Landlord with such other information concerning the proposed assignee or subtenant as requested by Landlord. Any proposed assignee or sublessee must agree to assume and agree to perform all the covenants and conditions of Tenant under this lease. In the case of any proposed assignment, or in the case of a proposed sublet of fifty percent (50%) or more of the Premises at a time when Tenant has not occupied the Premises, or if the proposed sublet is for fifty percent (50%) or more of the Premises for a sublet term ending within the last twelve (12) months of the term of this lease, Landlord shall have the right, exercisable by written notice to be delivered to Tenant within thirty (30) days of receipt of Tenant's notice, to terminate this lease effective as of the date specified in Tenant's notice as the proposed commencement date of the assignment or sublease. If Landlord does not elect to terminate this lease and if Landlord consents in writing to the proposed assignment or sublet (regardless of whether Landlord had a termination right), Tenant shall be free to assign or sublet all or a portion of the Premises subject to the following conditions: (i) any assignment or sublease shall be on the same terms set forth in the notice given to Landlord; (ii) no assignment or sublease shall be valid and no assignee or subtenant shall take possession of the Premises or sublet the Premises until an executed counterpart of such sublease has been delivered to Landlord: (iii) no subtenant shall have a further right to sublet; (iv) fifty percent (50%) of any sums or other economic consideration received by Tenant as a result of such assignment or sublet (after deducting rental or other payments received which are attributable to the amortization over the term of this lease of the cost of leasehold improvements constructed for such assignees or subtenant, and brokerage fees) whether denominated rentals or otherwise, which exceed, in the aggregate, the total sums which Tenant is obligated to pay Landlord under this lease (prorated to reflect obligations allocable to that portion of the Premises subject to a sublease), shall be payable to Landlord as additional rent under this lease without affecting or reducing any other obligation of Tenant hereunder; and (v) no sublet or assignment shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. Tenant shall pay to Landlord promptly upon demand as additional rent, Landlord's actual attorneys' fees and other costs incurred for reviewing, processing or documenting any requested assignment or sublease, whether or not Landlord's consent is granted.

If Tenant is a partnership, a withdrawal or change, voluntary or involuntary or by operation of law, of any general partner or those partners owning fifty percent (50%) or more of the ownership interest in any twelve (12) month period or the dissolution of the partnership shall be deemed an assignment of this lease subject to all the conditions of this paragraph 19. If Tenant is a limited liability company, a withdrawal or change, voluntary or involuntary or by operation of law, of any manager or those members owning fifty percent (50%) or more of the membership interest in the limited liability company in any twelve (12) month period or the dissolution of the limited liability company shall be deemed to be an assignment of this lease subject to all of the conditions of this paragraph 19. If Tenant is a corporation any dissolution, merger, consolidation or other reorganization of Tenant or the sale or other transfer of a controlling percentage of the capital stock of Tenant or the sale of more than fifty percent (50%) of the value of Tenant's assets within any twelve (12) month period shall be an assignment of this lease subject to all the conditions of this paragraph 19. The term "controlling percentage" means the ownership of, and the right to vote, stock possessing more than 50% of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote. This paragraph shall not apply if Tenant is a corporation the stock of which is traded through a national exchange.

Notwithstanding the foregoing or any other contrary provision hereof, if Tenant is not in default and so long as the Net Worth Test (as defined below) is satisfied, Tenant may, without Landlord's consent, assign this lease or sublease all or any portion of the Premises to (i) an Affiliate of Tenant, (ii) a successor to Tenant by merger, reincorporation, reorganization or consolidation, (iii) a successor to Tenant by purchase of all or substantially all of Tenant's assets or capital stock or (iv) any person or entity to whom Tenant wishes to make space in the Premises available for the purpose of analyzing whether Tenant is willing to make an investment in such person or entity in the ordinary course of Tenant's business (a "Permitted Transfer", and transferee thereunder, a "Permitted Transferee"). For the purposes of this lease, "Affiliate" shall mean any entity or person that controls, is controlled by, or is under common control with Tenant, directly or indirectly. In addition, a sale or transfer of the memberships, interests or stock of Tenant shall be deemed a Permitted Transfer if (x) such sale or transfer occurs in connection with any bona fide financing or capitalization for the benefit of Tenant (so long as the Net Worth Test is satisfied), or (y) Tenant is, or in connection with the proposed transfer becomes, a publicly traded entity (so long as the Net Worth Test is satisfied). Landlord shall have no right to terminate this lease in connection with, and shall have no right to any sums or other economic consideration resulting

from, any Permitted Transfer. As used herein, the "Net Worth Test" shall mean that a Permitted Transferee (or Tenant, pursuant to (x) or (y) above), shall have a tangible net worth, determined in accordance with generally accepted accounting principles, consistently applied, that is equal to or greater than the net worth of Tenant on the date of execution of this Lease, as disclosed by financial statements delivered by Tenant to Landlord prior to the date of execution of this Lease. Tenant shall deliver to Landlord competent evidence that the Net Worth Test has been satisfied within ten (10) days prior to the effective date of any transfer which Tenant seeks to qualify as a Permitted Transfer.

The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or sublet shall not be deemed consent to any subsequent assignment or sublet. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee or successor. Landlord may consent to subsequent assignments or sublets of this lease or amendments or modifications to this lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this lease.

No interest of Tenant in this lease shall be assignable by operation of law (including, without limitation, the transfer of this lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment: (i) if Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors or institutes a proceeding under the Bankruptcy Act in which Tenant is the bankrupt; or, if Tenant is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; (ii) if a writ of attachment or execution is levied on this lease; or (iii) if, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall constitute a default by Tenant and Landlord shall have the right to elect to terminate this lease, in which case this lease shall not be treated as an asset of Tenant.

Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this lease, all rent from any subletting of all or a part of the Premises as permitted by this lease, and Landlord, as assignee and as attorney-in fact for Tenant, or a receiver of Tenant appointed on Landlord's application, may collect such rent and apply it toward Tenant's obligations under this lease; except that, until the occurrence of a default by Tenant, Tenant shall have the right to collect such rent, subject to promptly forwarding to Landlord any portion thereof to which Landlord is entitled pursuant to this paragraph 19.

20. DEFAULT

The occurrence of any of the following shall constitute a default by Tenant: (i) failure of Tenant to pay any rent or other sum payable hereunder within three (3) days of when due; (ii) vacation or abandonment of the Premises (Tenant's failure to occupy and conduct business in the Premises for thirty (30) consecutive days shall be deemed an abandonment); or (iii) failure of Tenant to perform any other term, covenant or condition of this lease if the failure to perform is not cured within thirty (30) days after notice thereof has been given to Tenant (provided that if such default cannot reasonably be cured within thirty (30) days, Tenant shall not be in default if Tenant commences to cure such failure to perform within the thirty (30) day period and diligently and in good faith continues to cure the failure to perform). The notice referred to in clause (iii) above shall specify the failure to perform and the applicable lease provision and shall demand that Tenant perform the provisions of this lease within the applicable period of time. No notice shall be deemed a forfeiture or termination of this lease unless Landlord so elects in the notice. No notice shall be required in the event of abandonment or vacation of the Premises.

In addition to the above, the occurrence of any of the following events shall also constitute a default by Tenant: (i) Tenant fails to pay its debts as they become due or admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors (for purposes of determining whether Tenant is not paying its debts as they become due, a debt shall be deemed overdue upon the earliest to occur of the following: thirty (30) days from the date a statement therefor has been rendered; the date on which any action or proceeding therefor is commenced; or the date on which a formal notice of default or demand has been sent); or (ii) any financial statements given to Landlord by Tenant, any assignee of Tenant, subtenant of Tenant, any guarantor of Tenant, or successor in interest of Tenant (including, without limitation, any schedule of Tenant's aged accounts payable) are proved to be materially false. At any time during the term of this lease Landlord (but not more than twice in any calendar year), at Landlord's option, shall have the right to receive from Tenant upon Landlord's request, a current annual balance sheet for Landlord's review.

In the event of a default by Tenant, then Landlord, in addition to any other rights and remedies of Landlord at law or in equity, shall have the right either to terminate Tenant's right to possession of the Premises (and thereby terminate this lease) or, from time to time and without termination of this lease, to relet the Premises or any part thereof for the account and in the name of Tenant for such term and on such terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises.

Should Landlord elect to keep this lease in full force and effect, Landlord shall have the right to enforce all of Landlord's rights and remedies under this lease, including but not limited to the right to recover and to relet the Premises. If Landlord relets the Premises, then Tenant shall pay to Landlord, as soon as ascertained, the costs and expenses incurred by Landlord in such reletting and in making alterations and repairs. Rentals received by Landlord from such reletting shall be applied (i) to the payment of any indebtedness due hereunder, other than basic rent and operating costs, from Tenant to Landlord; (ii) to the payment of the cost of any repairs necessary to return the Premises to good condition normal wear and tear excepted, including the cost of alterations and the cost of storing any of Tenant's property left on the Premises at the time of reletting; and (iii) to the payment of basic rent or operating costs due and unpaid hereunder. The residue, if any, shall be held by Landlord and applied in payment of future rent or damages in the event of termination as the same may become due and payable hereunder and the balance, if any at the end of the term of this lease, shall be paid to Tenant. Should the basic rent and operating costs received from time to time from such reletting during any month be less than that agreed to be paid during that month by Tenant hereunder, Tenant shall pay such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such reletting of the Premises by Landlord shall be construed as an election on its part to terminate this lease unless a notice of such intention is given to Tenant or unless the termination hereof is decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this lease for such previous breach, provided it has not been cured. Landlord shall have the remedy described in California Civil Code section 1951.4 (Landlord may continue the lease in effect after Tenant's breach and abandonment and recover as rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations).

Should Landlord at any time terminate this lease for any breach, in addition to any other remedy it may have, it shall have the immediate right of entry and may remove all persons and property from the Premises and shall have all the rights and remedies of a landlord provided by California Civil Code Section 1951.2 or any successor code section. Upon such termination, in addition to all its other rights and remedies, Landlord shall be entitled to recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises and including (i) the worth at the time of award of 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 Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this lease or which in the ordinary course of events would be likely to result therefrom. The "worth at the time of award of the amounts referred to in (i) and (ii) above is computed by allowing interest at the rate of twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less. The "worth at the time of award of the amount referred to in (iii) above shall be computed by discounting such amount at the discount rate of the federal reserve bank of San Francisco at the time of award plus one percent (1%). Property removed from the Premises may be stored in a public or private warehouse or elsewhere at the sole cost and expense of Tenant. In the event that Tenant shall not immediately pay the cost of storage of such property after the same has been stored for a period of thirty (30) days or more, Landlord may sell any or all thereof at a public or private sale in such manner and at such times and places that Landlord, in its sole discretion, may deem proper, without notice to or demand upon Tenant.

21. LANDLORD'S RIGHT TO CURE TENANT'S DEFAULT

Landlord, at any time after Tenant commits a default, may, but shall not be obligated to, cure the default at Tenant's cost. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, the sum paid by Landlord shall be due immediately from Tenant to Landlord and shall bear interest at the rate of twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less, from the date the sum is paid by Landlord until Landlord is reimbursed by Tenant. Amounts due Landlord hereunder shall be additional rent.

22. EMINENT DOMAIN

If all or any part of the Premises shall be taken by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, this lease shall terminate as to any portion of the Premises so taken or conveyed on the date when title vests in the condemnor, and Landlord shall be entitled to any and all payments, income, rent, award or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance. Tenant shall have no claim against Landlord or otherwise for the value of any unexpired term of this lease. Notwithstanding the foregoing, Tenant shall be entitled to any compensation for depreciation to and cost of removal of Tenant's equipment and fixtures and any compensation for its relocation expenses necessitated by such taking, but in each case only to the extent the condemning authority makes a separate award therefor or specifically identifies a

portion of the award as being therefor. Each party waives the provisions of Section 1265.130 of the California Code of Civil Procedure (which section allows either party to petition the Superior Court to terminate this lease in the event of a partial taking of the Premises).

If any action or proceeding is commenced for such taking of the Premises or any portion thereof or of any other space in the Project, or if Landlord is advised in writing by any entity or body having the right or power of condemnation of its intention to condemn the Premises or any portion thereof or of any other space in the Project, and Landlord shall decide to discontinue the use and operation of the Project or decide to demolish, alter or rebuild the Project, then Landlord shall have the right to terminate this lease by giving Tenant written notice thereof within sixty (60) days of the earlier of the date of Landlord's receipt of such notice of intention to condemn or the commencement of said action or proceeding. Such termination shall be effective as of the last day of the calendar month next following the month in which such notice is given or the date on which title shall vest in the condemnor, whichever occurs first. In the event of a partial taking, or conveyance in lieu thereof, of the Premises and fifty percent (50%) or more of the number of square feet in the Premises are taken then Tenant may terminate this lease. Any election by Tenant to so terminate shall be by written notice given to Landlord within sixty (60) days from the date of such taking or conveyance and shall be effective on the last day of the calendar month next following the month in which such notice is given or the date on which title shall vest in the condemnor, whichever occurs first.

If a portion of the Premises is taken by power of eminent domain or conveyance in lieu thereof and neither Landlord nor Tenant terminates this lease as provided above, then this lease shall continue in full force and effect as to the part of the Premises not so taken or conveyed and all payments of rent shall be apportioned as of the date of such taking or conveyance so that thereafter the amounts to be paid by Tenant shall be in the ratio that the area of the portion of the Premises not so taken bears to the total area of the Premises prior to such taking.

23. NOTICE AND COVENANT TO SURRENDER

On the last day of the term or on the effective date of any earlier termination, Tenant shall surrender to Landlord the Premises and all of Tenant's improvements and alterations in their condition existing as of the commencement of the term (normal wear and tear excepted), with all originally painted interior walls washed or repainted if marked or damaged, interior vinyl covered walls cleaned and repaired or replaced if marked or damaged, all carpets shampooed and cleaned, the air conditioning and heating system serviced and repaired by a reputable and licensed service firm (unless Landlord has elected to maintain such system pursuant to paragraph 9) and all floors cleaned and waxed; all to the reasonable satisfaction of Landlord, Tenant shall remove all of Tenant's personal property and trade fixtures, together with improvements or alterations that Tenant is obligated to remove pursuant to the provisions of paragraph 8, from the Premises, and all such property not removed shall be deemed abandoned.

If the Premises are not surrendered as required in this paragraph 23, Tenant shall indemnify Landlord against all loss, liability and expense (including but not limited to, attorney fees) resulting from the failure by Tenant in so surrendering the Premises, including, without limitation, any claims made by any succeeding tenants. It is agreed between Landlord and Tenant that the provisions of this paragraph 23 shall survive termination of this lease.

24. TENANT'S QUITCLAIM

At the expiration or earlier termination of this lease, Tenant shall execute, acknowledge and deliver to Landlord, within ten (10) days after written demand from Landlord to Tenant, any quitclaim deed or other document required to remove the cloud or encumbrance created by this lease from the real property of which the Premises are a part. This obligation shall survive said expiration or termination.

25. HOLDING OVER

Any holding over after the expiration or termination of this lease with the written consent of Landlord shall be construed to be a tenancy from month to month at 150% of the monthly rent as adjusted, in effect on the date of such expiration or termination. All provisions of this lease, except those pertaining to the term and any option to extend, shall apply to the month-to-month tenancy. The provisions of this paragraph are in addition to, and do not affect, Landlord's right of reentry or other rights hereunder or provided by law.

If Tenant shall retain possession of the Premises or any part thereof without Landlord's consent following the expiration or sooner termination of this lease for any reason, then Tenant shall pay to Landlord for each day of such retention 1/30th of 150% of the monthly rent monthly rental in effect during the last month prior to the date of such expiration or termination. Tenant shall also indemnify and hold Landlord harmless from any loss, liability and expense (including, but not limited to, attorneys fees) resulting from delay by Tenant in surrendering the Premises, including without limitation any claims

made by any succeeding tenant founded on such delay. Acceptance of rent by Landlord following expiration or termination shall not constitute a renewal of this lease, and nothing contained in this paragraph shall waive Landlord's right to re-entry or any other right. Tenant shall be only a Tenant at sufferance, whether or not Landlord accepts any rent from Tenant, while Tenant is holding over without Landlord's written consent.

26. SUBORDINATION

In the event Landlord's title or leasehold interest is now or hereafter encumbered in order to secure a loan to Landlord, Tenant shall, within ten (10) days of written request from Landlord or the lender, execute in writing an agreement subordinating its rights under this lease to the lien of such encumbrance, or, if so requested, agreeing that the lien of lender's encumbrance shall be or remain subject and subordinate to the rights of Tenant under this lease. Tenant's failure to execute and deliver a subordination agreement in a timely manner shall constitute a material default under this lease. Tenant hereby irrevocably appoints Landlord the attorney-in-fact of Tenant to execute, deliver and record any such instrument or instruments for and in the name and on behalf of Tenant. Notwithstanding any such subordination, Tenant's possession under this lease shall not be disturbed if Tenant is not in default and so long as Tenant shall pay all amounts due hereunder and otherwise observe and perform all provisions of this lease. In addition, if in connection with any such loan the lender shall request reasonable modifications of this lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereof, provided that such modifications do not increase the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as are reasonably required by Landlord or Landlord's lender to verify the net worth of Tenant. In addition, Tenant shall deliver to Landlord's lender any financial statements required by such holder to facilitate the financing or refinancing of Landlord's interest in the Project. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential and shall be used only for the purposes set forth herein.

27. CERTIFICATE OF ESTOPPEL

Each party shall, within ten (10) calendar days after written request therefor, execute and deliver to the other party, in recordable form, a certificate stating that the lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications. The certificate shall also state the amount of the monthly rent, the date to which monthly rent has been paid in advance, the amount of the security deposit and/or prepaid monthly rent, and, if the request is made by Landlord, shall include such other items as Landlord or Landlord's lender may reasonably request. Failure to deliver such certificate within such time shall constitute a conclusive acknowledgment by the party failing to deliver the certificate that the lease is in full force and effect and has not been modified except as may be represented by the party requesting the Certificate. Failure of Tenant to deliver such estoppel certificate in a timely manner shall constitute a material default hereunder. Any such Certificate requested by Landlord may be conclusively relied upon by any prospective purchaser or encumbrance of the Premises or Project. Further, within ten (10) calendar days following written request made from time to time by Landlord (but not more often than twice during each calendar year), Tenant shall furnish to Landlord current financial statements of Tenant.

28. SALE BY LANDLORD

In the event the original Landlord hereunder, or any successor owner of the Project or Premises, shall sell or convey the Project or Premises, such seller shall transfer the security deposit and from and after such transfer and the assumption by transferee of all liabilities and obligations of "Landlord" hereunder, all liabilities and obligations on the part of the original Landlord, or such successor owner, under this lease accruing thereafter shall terminate, and thereupon all such liabilities and obligations shall be binding upon the new owner. Tenant agrees to attorn to such new owner and to look solely to such new owner for performance of any and all such liabilities and obligations.

29. ATTORNMENT TO LENDER OR THIRD PARTY

In the event the interest of Landlord in the land and buildings in which the Premises are located (whether such interest of Landlord is a fee title interest or a leasehold interest) is encumbered by deed of trust, and such interest is acquired by a lender or any other third party through judicial foreclosure or by exercise of a power of sale at private trustee's foreclosure sale, Tenant hereby agrees to release Landlord of any obligation arising on or after any such foreclosure sale and to attorn to the purchaser at any such foreclosure sale and to recognize such purchaser as the Landlord under this lease, provided such purchaser agrees not to disturb Tenant's use and occupancy of the Premises for the remainder of the term of the lease.

30. DEFAULT BY LANDLORD

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time but in no event earlier than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

If Landlord is in default of this lease, Tenant's sole remedy shall be to institute suit against Landlord in a court of competent jurisdiction, and Tenant shall have no right to offset any sums expended by Tenant as a result of Landlord's default against future rent and other sums due and payable pursuant to this lease. If Landlord is in default of this lease, and as a consequence Tenant recovers a money judgment against Landlord, the judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the right, title and interest of Landlord in the Project of which the Premises are a part, and out of rent or other income from such real property receivable by Landlord or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Project of which the Premises are a part. The partners comprising the partnership designated as Landlord shall not be personally liable for any deficiency.

31. CONSTRUCTION CHANGES

It is understood that the description of the Premises and the location of ductwork, plumbing and other facilities therein are subject to such changes as Landlord or Landlord's architect determines to be desirable in the course of construction of the Premises and/or the improvements constructed or being constructed therein and no such changes or any changes in plans for any other portions of the Project, shall affect this lease or entitle Tenant to any reduction of rent hereunder or result in any liability of Landlord to Tenant; provided, however, that Landlord shall use reasonable efforts to minimize any interference with Tenant's business caused by such changes and the construction thereof.

32. MEASUREMENT OF PREMISES

Tenant understands and agrees that any reference to square footage of the Premises is approximate only and includes all interior partitions, columns and exterior walls, and one-half of the partitions separating the Premises from the rest of the Project, Tenant's proportionate share of the Common Area and, if applicable, covered areas immediately outside the entry doors or loading docks. Tenant waives any claim against Landlord regarding the accuracy of any such measurement and agrees that there shall not be any adjustment in basic rent or operating costs or other amounts payable hereunder or in Tenants proportionate share by reason of inaccuracies in such measurement.

33. ATTORNEY FEES

If either party commences an action against the other party arising out of or in connection with this lease, the prevailing party shall be entitled to have and recover from the losing party all expenses of litigation, including, without limitation, travel expenses, reasonable attorney fees, expert witness fees, trial and appellate court costs, and deposition and transcript expenses. If either party becomes a party to any litigation concerning this lease, or concerning the Premises or the Project, by reason of any act or omission of the other party or its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to the other party for all expenses of litigation reasonably incurred, including, without limitation, travel expenses, attorney fees, expert witness fees, trial and appellate court costs, and deposition and transcript expenses.

34. SURRENDER

The voluntary or other surrender of this lease or the Premises by Tenant, or a mutual cancellation of this lease, shall not work a merger, and at the option of Landlord shall either terminate all or any existing subleases or subtenancies or operate as an assignment to Landlord of all or any such subleases or subtenancies.

35. WAIVER

No delay or omission in the exercise of any right or remedy of either party on any default by the other party shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent rent or other payments shall not constitute a waiver of any other default and acceptance of partial payments shall not be construed as a waiver of the balance of such payment due. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Premises, shall constitute an acceptance of the surrender of the Premises by Tenant before the expiration of the term.

Only a written notice from Landlord to Tenant shall constitute acceptance of the surrender of the Premises and accomplish a termination of this lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this lease.

36. EASEMENTS; AIRSPACE RIGHTS

Landlord reserves the right to alter the boundaries of the Project and grant easements and dedicate for public use portions of the Project without Tenant's consent, provided that no such grant or dedication shall interfere with Tenant's use of the Premises or otherwise cause Tenant to incur cost or expense. From time to time, and upon Landlord's demand, Tenant shall execute, acknowledge and deliver to Landlord, in accordance with Landlord's instructions, any and all documents, instruments, maps or plats necessary to effectuate Tenant's covenants hereunder.

This lease confers no rights either with regard to the subsurface of or airspace above the land on which the Project is located or with regard to airspace above the building of which the Premises are a part. Tenant agrees that no diminution or shutting off of light or view by a structure which is or may be erected (whether or not by Landlord) on property adjacent to the building of which the Premises are a part or to property adjacent thereto, shall in any way affect this lease, or entitle Tenant to any reduction of rent, or result in any liability of Landlord to Tenant.

37. RULES AND REGULATIONS

Landlord shall have the right from time to time to promulgate rules and regulations for the safety, care and cleanliness of the Premises, the Project and the Common Area, or for the preservation of good order. On delivery of a copy of such rules and regulations to Tenant, Tenant shall comply with the rules and regulations, and a violation of any of them shall constitute a default by Tenant under this lease. If there is a conflict between the rules and regulations and any of the provisions of this lease, the provisions of this lease shall prevail. Such rules and regulations may be amended by Landlord from time to time with or without advance notice.

38. NOTICES

All notices, demands, requests, consents and other communications which may be given or are required to be given by either party to the other shall be in writing and shall be sufficiently made and delivered if personally served or if sent by United States first class mail, postage prepaid. All such communications from Landlord to Tenant shall be addressed to Tenant at the Premises. All such communications by Tenant to Landlord shall be sent to Landlord at its offices at 127 2nd Street, Suite #4, Los Altos, California 94022. Either party may change its address by notifying the other of such change. Each such communication shall be deemed received on the date of the personal service or mailing thereof in the manner herein provided, as the case may be.

39. NAME

Tenant shall not use the name of the Project for any purpose, other than as the address of the business conducted by Tenant in the Premises, without the prior written consent of Landlord.

40. GOVERNING LAW; SEVERABILITY

This lease shall in all respects be governed by and construed in accordance with the laws of the State of California. If any provision of this lease shall be held or rendered invalid, unenforceable or ineffective for any reason whatsoever, all other provisions hereof shall be and remain in full force and effect.

41. DEFINITIONS

As used in this lease, the following words and phrases shall have the following meanings:

Additional Rent: any amount described in paragraph 53, below.

Authorized representative: any of officer, agent, employee or independent contractor retained or employed by either party, acting within authority given him by that party.

Encumbrance: any deed of trust, mortgage or other written security device or agreement affecting the Premises or the Project that constitutes security for the payment of a debt or performance of an obligation, and the note or obligation secured by such deed of trust, mortgage or other written security device or agreement.

Hazardous Materials shall have the meaning set forth in paragraph 50c, below.

Lease month: the period of time determined by reference to the day of the month in which the term commences and continuing to one day short of the same numbered day in the next succeeding month; e.g., the tenth day of one month to and including the ninth day in the next succeeding month.

Lender: the beneficiary, mortgagee, ground lessor or other holder of an encumbrance, as defined above.

Lien: a charge imposed on the Premises by someone other than Landlord, by which the Premises are made security for the performance of an act. Most of the liens referred to in this lease are mechanic's liens.

Maintenance: repairs, replacement, repainting and cleaning.

Monthly Rent: the sum of the monthly payments of basic rent and common area charges.

Operating Costs shall have the meaning defined in paragraph 16, above.

Person: one or more human beings, or legal entities or other artificial persons, including, without limitation, partnerships, corporations, trusts, estates, associations and any combination of human being and legal entities.

Provision: any term, agreement, covenant, condition, clause, qualification, restriction, reservation or other stipulation in the lease that defines or otherwise controls, establishes or limits the performance required or permitted by either party.

Punchlist Items: minor repairs to painting, carpets, walls and other interior improvements as described in Exhibit "C".

Rent: basic rent, operating costs, additional rent, and all other amounts payable by Tenant to Landlord required by this lease or arising by subsequent actions of the parties made pursuant to this lease.

Words used in any gender include other genders. If there be more than one Tenant, the obligations of Tenant hereunder are joint and several. All provisions whether covenants or conditions, on the part of Tenant shall be deemed to be both covenants and conditions. The paragraph headings are for convenience of reference only and shall have no effect upon the construction or interpretation of any provision hereof.

42. TIME

Time is of the essence of this lease and of each and all of its provisions.

43. EXAMINATION OF LEASE

Submission of this lease for examination or signature by Tenant does not constitute a reservation or option for a lease, and this lease is not effective until its execution and delivery by both Landlord and Tenant.

44. INTEREST ON PAST DUE OBLIGATIONS; LATE CHARGE

Any amount due from Tenant to Landlord hereunder which is not paid within thirty (30) days of the date due shall bear interest at the rate of ten percent (10%) per annum from when due until paid, unless otherwise specifically provided herein, but the payment of such interest shall not excuse or cure any default by Tenant under this lease. In addition, Tenant acknowledges that late payment by Tenant to Landlord of basic rent or operating costs or of any other amount due Landlord from Tenant, will cause Landlord to incur costs not contemplated by this lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord, e.g., by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any such payment due from Tenant is not received by Landlord within five (5) days of the date due (without the requirement of providing Tenant notice), Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue payment as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord. No notice to Tenant of failure to pay shall be required prior to the imposition of such interest and/or late charge, and any notice period provided for in paragraph 20 shall not affect the imposition of such interest and/or late charge.

45. ENTIRE AGREEMENT

This lease, including any exhibits and attachments, constitutes the entire agreement between Landlord and Tenant relative to the Premises and this lease and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves or their agents or representatives relative to the leasing of the Premises are merged in or revoked by this lease.

46. CORPORATE AUTHORITY

If Tenant is a corporation, Tenant represents and warrants that each individual executing this lease on behalf of the corporation is duly authorized to execute and deliver this lease on behalf of the corporation in accordance with a duly adopted resolution of the Board of Directors of said corporation and that this lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall deliver to Landlord, within ten (10) days of the execution of this lease, a copy of the resolution of the Board of Directors of Tenant authorizing the execution of this lease and naming the officers that are authorized to execute this lease on behalf of Tenant, which copy shall be certified by Tenant's president or secretary as correct and in full force and effect.

47. RECORDING

Neither Landlord nor Tenant shall record this lease or any short form memorandum heretofore without the consent of the other.

48. REAL ESTATE BROKERS

Each party represents that it has not had dealings with any real estate broker finder or other person with respect to this lease in any manner, except Cornish & Carey Commercial, ONCOR International. A full six percent (6%) commission shall be paid to the procuring broker represented by James Marzoni and Ben Stern. Each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder or other person with whom the other party has or purportedly has dealt.

49. EXHIBITS AND ATTACHMENTS

All exhibits and attachments to this lease are a part hereof.

50. ENVIRONMENTAL MATTERS

A. Tenant's Covenants Regarding Hazardous Materials.

(1) Without limiting Tenant's obligations under paragraph 7 hereof, Tenant shall comply with and shall cause the Project to comply with, all federal, state, and local laws, statutes, rules, regulations, codes, ordinances, and other governmental requirements (including, without limitation, permits, licenses, consent decrees and administrative orders) now or hereafter in effect relating or pertaining in any way to (i) human health, safety or protection, (ii) workplace safety, (iii) industrial hygiene, (iv) the use, generation, handling, maintenance, treatment, removal, transportation, storage, release, discharge, disposal, or disclosure of Hazardous Materials, or (v) the protection or regulation of the environment, all as amended and modified from time to time (collectively, "Environmental Requirements"). Tenant shall cause all governmental permits and other approvals relating to the use or operation of the Project required by applicable Environmental Requirements or any other applicable laws to all times remain in effect, and Tenant shall at all times comply with such permits and other approvals.

(2) Tenant shall not cause, or permit to occur, any release, discharge, use, generation, manufacture, storage, treatment, transportation, or disposal by Tenant or any of its employees, agents, contractors, visitors, clients, customers, sublessees, assignees, successors, licensees or invitees, of any Hazardous Materials on, in, under, about, or from the Premises or any other part of the Project. However, notwithstanding the foregoing, Tenant may use on the Premises, without Landlord's prior written consent, but only upon written notice to Landlord and in compliance with all Environmental Requirements and other applicable laws, any ordinary and customary materials reasonably required for use by Tenant in the normal course of the permitted use described in paragraph 1 hereof and further, but only so long as such use is not a Reportable Use (defined below) and does not expose the Premises or any other part of the Project or neighboring properties to any meaningful risk of contamination or damage or expose Landlord to any liability whatsoever therefor. In addition, Landlord may (but without any obligation to do so) condition its consent to any Reportable Use of any Hazardous Materials by Tenant upon Tenant's giving Landlord such additional assurances as Landlord in its sole' discretion, deems necessary to protect itself, the public, the Premises, the Project, and the environment against damage,

contamination or injury and/or liability therefor, including but not limited to the installation (and, at Landlord's option, removal on or before the expiration or earlier termination of this lease) of reasonably necessary protective modifications to the Premises (such as concrete encasement) and/ or the deposit of an additional security deposit. As used herein, "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the release, generation, possession, storage, use, transportation, discharge or disposal of any Hazardous Materials 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 agency or authority, and (iii) the presence in, on or about the Premises, the Project of any Hazardous Materials with respect to which any Environmental Requirements or other applicable laws require that a notice be given to persons entering or occupying the Premises, the Project or neighboring properties.

(3) If Tenant knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located in, on, under or about the Premises or the Project (other than those Hazardous Materials that have come to be located beneath and/or in the vicinity of the Project prior to the date of this lease and other than those Hazardous Materials as previously consented to by Landlord in writing, if any), to by Landlord, Tenant shall immediately give Landlord written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding, given to, or received from, any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials including but not limited to all such documents as may be involved in any Reportable Use involving the Premises or the Project. Landlord's receipt of any notice, documents or other information from Tenant as provided above in this paragraph shall not create any obligation on the part of Landlord to respond in any way to such notice, documents or information or the conditions described therein.

(4) Tenant shall immediately notify Landlord and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Premises or compliance with Environmental Requirements. Tenant shall promptly cure and have dismissed with prejudice any of those actions and proceedings involving the acts or omissions of Tenant to the satisfaction of Landlord.

(5) Landlord, its agents, employees, contractors and designated representatives, and the holders of any mortgages, deeds of trust or ground leases on the Premises or Project shall have the right, but not the obligation, to enter the Premises at any time in the case of an emergency, and otherwise at reasonable times upon at least twenty-four (24) hours notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this lease (including compliance with Environmental Requirements) and Landlord shall be entitled to employ experts and/or consultants in connection therewith to advise Landlord with respect to Tenant's activities, including but not limited to Tenant's use, storage, handling, transportation, maintenance, or removal of any Hazardous Materials on or from the Premises. The costs and expenses of any such inspections shall be paid by the party requesting same, unless a default or breach of this lease by Tenant or a violation of any Environmental Requirement or a contamination caused or materially contributed to by the Tenant is found to exist or to be imminent, or unless the inspection is requested or ordered by a governmental agency or authority as the result of any such existing or imminent violation or contamination, in such case, Tenant shall upon request reimburse Landlord, for the costs and expenses of such inspections.

(6) If Tenant breaches any of its warranties, representations, or covenants under this paragraph 50, Landlord may, without obligation, cause the removal (or other cleanup or other response acceptable to Landlord) of any Hazardous Materials from the Project, and the costs of any Hazardous Materials removal, remediation, detoxification, or other response (including, without limitation, disposal, transportation and storage costs and all costs of refitting or otherwise altering the Premises or any other part of the Project shall be covered by the indemnity in paragraph 50B, below, whether or not a court or other governmental authority has ordered such removal, remediation, detoxification or other response and those costs shall become due and payable on demand by Landlord. Tenant shall give Landlord, its agents, contractors, and employees access to the Premises to remove, remediate, detoxify, clean up or otherwise respond to any Hazardous Materials, and this lease shall not be construed as creating any such obligation.

B. Indemnification of Landlord. Tenant agrees to indemnify, defend (with counsel reasonably acceptable to Landlord and at Tenant's sole cost), and hold Landlord and Landlord's partners, employees, agents, attorneys, successors and assigns free and harmless from and against any and all losses, liabilities, obligations, penalties, claims, litigation, orders, demands, defenses, costs, judgments, suits, penalties, proceedings, damages (including, without limitation, consequential damages, diminution of the value of the Premises or Project, disbursements, losses, or expenses of any kind (including, without limitation, reasonable attorneys' and experts' fees and expenses) incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, suffered by, incurred by, or asserted or awarded against Landlord or any of its partners, employees, agents, attorneys, successors or assigns in connection with or arising directly or indirectly out of:

(1) Any release, threatened release, discharge, handling, use, storage, presence, transportation, or disposal of any Hazardous Materials (whether or not the use thereof is a Reportable Use or has been consented to by Landlord) on, in, under, or affecting all or any part of the Premises or Project which is (or are) attributable, in whole or in part, directly or indirectly, to any act or omission of Tenant or any employee, agent, contractor, visitor, client, customer, sublessee, assignee, successor, licensee or invitee of Tenant;

(2) Any misrepresentation, inaccuracy, or breach of any warranty, covenant, or agreement contained or referred to in this paragraph 50;

(3) Any failure by Tenant or any employee, agent, contractor, visitor, customer, sublessee, assignee, successor, client, licensee or invitee of Tenant to comply with any Environmental Requirement or other applicable law, whether such failure was made knowingly or unknowingly or intentionally or unintentionally.

This indemnification is the personal obligation of Tenant and shall survive the expiration or sooner termination of this lease. Tenant, its successors, and assigns waive, release, and agree not to make any claim or bring any cost recovery action against Landlord under the Comprehensive Environmental Response, Compensation and Liability Act, as amended and reauthorized to date (42 U.S.C. § § 9601 et seq.) ("CERCLA"), or any state equivalent or any similar law now existing or enacted after this date. To the extent that Landlord is strictly liable under any such law, regulation, ordinance, or requirement, Tenant's obligation to Landlord under this indemnity shall also be without regard to fault on the part of Tenant with respect to the violation or condition that results in liability to Landlord.

Notwithstanding the foregoing or anything else to the contrary in this lease, nothing in this lease shall create any liability on the part of Tenant for any damages, injury, losses or claims arising out of Hazardous Materials (i) present at or about the Premises, Building or Project prior to the commencement of the term, (ii) that emanate onto the Premises, Building or Project from outside thereof that are not the responsibility of Tenant under the foregoing provisions or (iii) that are introduced to the Premises, Building or Project by Landlord or its officers, assignees, concessionaires, licensees, agents, employees or contractors or other tenants of the Project, and Landlord shall indemnify, defend and hold Tenant harmless from any of the foregoing.

C. Definition of Hazardous Materials. "Hazardous Materials" means any product substance, chemical, material or waste whose presence, nature, quantity and/or intensity or existence, use, manufacture, disposal, transportation, spill, release, or effect, either by itself or in combination with any other materials, substances or chemicals is either (i) potentially injurious or harmful to the public health, safety or welfare, the Premises, or the environment (including, without limitation, any soil, air, groundwater, and subsurface media on, in, under, above or about the Project); (ii) regulated or monitored by any federal, state or local governmental authority; or (iii) a basis for potential liability of Landlord to any governmental agency, private party, or other third party under any Environmental Requirement or any other applicable statute, regulation, code, ordinance or common law theory. Without limiting the scope or generality of the foregoing, Hazardous Materials shall include, but not be limited to any petroleum or petroleum byproducts or petroleum hydrocarbons, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste and any "hazardous substance" or "toxic waste" as those terms are defined under the provision of the California Health and Safety Code and/or CERCLA.

D. Survival. The provisions of this paragraph 50 shall survive the expiration or earlier termination of the term of this lease.

51. SIGNAGE

Tenant shall have the right to approximately 50% of signage associated with the Project. Tenant shall not, without obtaining the prior written consent of Landlord, install or attach any sign or advertising material on any part of the outside of the Premises, or on any part of the inside of the Premises which is visible from the outside of the Premises, or in the halls, lobbies, windows or elevators of the building in which the Premises are located or on or about any other portion of the Common Area or Project. If Landlord consents to the installation of any sign or other advertising material, the location, size, design, color and other physical aspects thereof shall be subject to Landlord's prior written approval and shall be in accordance with any sign program applicable to the Project. In addition to any other requirements of this paragraph 51, the installation of any sign or other advertising material by or for Tenant must comply with all applicable laws, statutes, requirements, rules, ordinances and any C.C.&R.'s or other similar requirements. With respect to any permitted sign installed by or for Tenant, Tenant shall maintain such sign or other advertising material in good condition and repair and shall remove such sign or other advertising material on the expiration or earlier termination of the term of this lease. The cost of any permitted sign or advertising material and all costs associated with the installation, maintenance and removal thereof shall be paid for solely by Tenant. If Tenant fails to properly maintain or remove any permitted sign or other advertising material, Landlord may do so at Tenant's expense. Any cost incurred by Landlord in connection with such maintenance or removal shall be deemed additional rent and shall be paid by Tenant to Landlord within ten (10) days following notice from Landlord. Landlord may

remove any unpermitted sign or advertising material without notice to Tenant and the cost of such removal shall be additional rent and shall be paid by Tenant within ten (10) days following notice from Landlord. Landlord shall not be liable to Tenant for any damage, loss or expense resulting from Landlord's removal of any sign or advertising material in accordance with this paragraph 51. The provisions of this paragraph 51 shall survive the expiration or earlier termination of this lease.

52. SUBMISSION OF LEASE

The submission of this lease to Tenant is not an offer to lease the Premises, or an agreement by Landlord to reserve the Premises for Tenant. Landlord will not be bound to Tenant until Tenant has duly executed and delivered duplicate original leases to Landlord and Landlord has duly executed and delivered one of those duplicate original leases to Tenant.

53. ADDITIONAL RENT

All costs, charges, fees, penalties, interest and any other payments (including Tenant's reimbursement to Landlord of costs incurred by Landlord) which Tenant is required to make to Landlord pursuant to the terms and conditions of this lease and any amendments to this lease shall be and constitute additional rent payable by Tenant to Landlord when due as specified in this lease and any amendments to this lease.

54. CONDITION OF PROJECT

Tenant acknowledges that, except as expressly contained in this lease, neither Landlord nor anyone acting for or on behalf of Landlord has made any representation, warranty or promise to Tenant concerning the physical aspects or condition of any of the Project; the feasibility, desirability or convertibility of any of the Project into any particular use; the zoning, building or land use restrictions applicable to the zoning, building or land use restrictions applicable to the Project; the projected income or expenses for any of the Project or any business conducted thereon; the suitability of the Project for any particular use; or the presence or absence of any Hazardous Materials; and that in entering into this lease, Tenant has not relied upon any representation, statement or warranty of Landlord or anyone acting for or on behalf of Landlord, other than as expressly contained in this lease, and that all matters concerning the Premises shall be independently verified by Tenant and that Tenant shall enter into this lease on Tenant's own examination thereof (or Tenant's election not to do so). Tenant does hereby waive, and Landlord does hereby disclaim, all warranties of any type or kind whatsoever with respect to the Project, express or implied, including by way of description, but not limitation, those of fitness for a particular purpose, tenantability, habitability and use. Tenant hereby expressly assumes the risk that adverse physical conditions and the full extent thereof (including, without limitation, soil, groundwater and surface water contamination and air pollution from Hazardous Materials) may not be revealed by Tenant's inspections, reviews and studies of the Project prior to the date of possession.

No person acting on behalf of Landlord is authorized to make, and by execution hereof Tenant acknowledges that no such person has made, any representation, warranty, guaranty or promise except as may be expressly set forth herein; and no agreement, statement, representation, guaranty or promise made by any such person which is not expressly contained herein shall be valid or binding on Landlord and Landlord's agents, heirs, successors or assigns. The only representations or warranties outstanding with respect to the Project, or Landlord, either express or implied by law, are expressly set forth herein.

55. PREMISES TAKEN "AS IS"

Except as otherwise set forth herein, Tenant is leasing the Premises (including the furniture, cabling and security system within the Premises) from Landlord "as is" in its existing condition as of the date hereof. Landlord shall have no obligation to alter or improve the Premises except as described in Exhibit "C" and paragraphs 7 and 9 above. All references to the Premises or the Project in this paragraph 55 shall be deemed to include the furniture, cabling and security system within the Premises.

Tenant acknowledges that, except as expressly contained in this lease, neither Landlord nor anyone acting for or on behalf of Landlord has made any representation, warranty or promise to Tenant concerning the physical aspects or condition of any of the Project; the feasibility, desirability or convertibility of any of the Project into any particular use; the zoning, building or land use restrictions applicable to the zoning, building or land use restrictions applicable to the Project; the projected income or expenses for any of the Project or any business conducted thereon; the suitability of the Project for any particular use; or the presence or absence of any Hazardous Materials; and that in entering into this lease, Tenant has not relied upon any representation, statement or warranty of Landlord or anyone acting for or on behalf of Landlord, other than as expressly contained in this lease, and that all matters concerning the Premises shall be independently verified by Tenant and that Tenant shall enter into this lease on Tenant's

own examination thereof (or Tenant's election not to do so). Tenant does hereby waive, and Landlord does hereby disclaim, all warranties of any type or kind whatsoever with respect to the Project, express or implied, including by way of description, but not limitation, those of fitness for a particular purpose, tenantability, habitability and use. Tenant hereby expressly assumes the risk that adverse physical conditions and the full extent thereof (including, without limitation, soil, groundwater and surface water contamination and air pollution from Hazardous Materials) may not be revealed by Tenant's inspections, reviews and studies of the Project prior to the date of possession.

No person acting on behalf of Landlord is authorized to make, and by execution hereof Tenant acknowledges that no such person has made, any representation, warranty, guaranty or promise except as may be expressly set forth herein; and no agreement, statement, representation, guaranty or promise made by any such person which is not expressly contained herein shall be valid or binding on Landlord and Landlord's agents, heirs, successors or assigns. The only representations or warranties outstanding with respect to the Project, or Landlord, either express or implied by law, are expressly set forth herein.

Tenant acknowledges that any and all documentary information, soil reports, environmental audits, site assessments, analyses or reports, insurance policies or other information of whatever type which Tenant has received or may receive from Landlord or Landlord's agents is furnished on the express condition that Tenant shall make Tenant's own independent verification of the accuracy and completeness of such information. Tenant agrees that Tenant shall not attempt to assert any liability upon Landlord or Landlord's agents for furnishing such information and Tenant does hereby release Landlord and Landlord's agents, heirs, successors and assigns free and harmless from and against, any and all such claims or liability.

56. OPTION TO EXTEND TERM

Landlord grants to Tenant the option to extend the term for one period of two (2) years (the "extended term") under all the provisions of this lease except for the amount of the basic rent. The basic rent for the extended term shall be adjusted to the market rate, and the basic rent as so adjusted shall be adjusted annually as provided below, provided that in no event shall the basic rent for the extended term be less than the basic rent in effect at the expiration of the initial term. This option is further subject to the following terms and conditions:

(a) Tenant must deliver its irrevocable written notice of Tenant's exercise of this option to Landlord not less than six (6) lease months, nor more than twelve (12) lease months, prior to the expiration of the initial term.

(b) The parties shall have thirty (30) days from the date Landlord receives Tenant's notice of exercise in which to agree on the amount constituting the basic rent during the extended term. If Landlord and Tenant agree on the amount of basic rent, they shall immediately execute an amendment to this lease setting forth the expiration date of the extended term and the amount of the basic rent to be paid by Tenant during the extended term, including the annual adjustment period. If Landlord or Tenant are unable to agree on the amount of basic rent within such time period, then, at the request of either party, the market rate shall be determined by appraisal in the following manner: (1) within thirty (30) days of the request for such appraisal, Landlord and Tenant shall each select a licensed real estate broker with not less than five (5) years experience in the business of commercial leasing of property of the same type and use, and in the same geographic area, as the Premises; (ii) within fifteen days of their appointment, such two real estate brokers shall select a third real estate broker similarly qualified; (iii) within thirty (30) days from the appointment of the third broker, the three brokers so selected shall, acting as a board of arbitrators, then appraise the Premises and determine the amount of the market rate, basing their determination on using standard procedures and tests normally employed in making such appraisals and applying the factors included within the definition of market rate set forth in subparagraph (c) below. The decision of the majority of said brokers shall be final and binding upon the parties hereto. If a majority of the brokers are unable to agree on the market rate within the stipulated period of time, the three appraisals shall be added together and their total divided by three; the resulting quotient shall be the market rate. If, however, the low appraisal and/or the high appraisal are/is more than 15% lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal, as the case may be, shall be disregarded. If only one appraisal is disregarded, the remaining two appraisals shall be added together and their total divided by two and the resulting quotient shall be the market rate. If both the low appraisal and the high appraisal are disregarded as stated in this paragraph, the middle appraisal shall be the market rate. If a party does not appoint a broker within the required time period, the broker appointed by the other party shall be the sole broker and shall determine the market rate. If the two brokers appointed by the parties are unable to agree on the third broker, either of the parties to the lease, by giving ten (10) days' notice to the other party, can apply to the then county real estate board of the county in which the Premises are located, or to the presiding judge of the superior court of that county, for the selection of a third broker who meets the qualifications stated in this paragraph. Each party shall pay the expenses and charges of the broker appointed by it and the parties shall pay the expenses and charges of the third broker in equal shares. Basic rent for the first lease year of the extended

term shall be equal to the greater of the market rate as determined hereunder or basic rent charged for the last lease year of the prior term. When the basic rent has been so determined, Landlord and Tenant shall immediately execute an amendment to this lease stating the revised basic rent and adjustment provision for the extended term.

(c) As used herein, the "market rate" shall be the monthly rent (triple net) then obtained for leases of comparable terms for Premises in the Project and/or projects within the City of Palo Alto of similar type, identity, quality and location as the Project.

(d) The basic rent for the extended term, determined as provided above, shall be adjusted annually, commencing on the first day of the thirteenth month of the extended term, in the manner provided in paragraph 5 of this lease (i.e., X% per year).

(e) The extension rights herein described are personal to the original Tenant (or any transferee pursuant to a Permitted Transfer) and may not be exercised by or for the benefit of any assignee or subtenant of the original Tenant (other than a transferee pursuant to a Permitted Transfer). Tenant shall not assign or otherwise transfer this option or any interest therein and any attempt to do so shall render this option null and void. Tenant shall have no right to extend this term beyond the extended term. If Tenant is in default under this lease at the date of delivery of Tenant's notice of exercise to Landlord, then such notice shall be of no effect and this lease shall expire at the end of the initial term; if Tenant is in default under this lease at the last day of the initial term, then Landlord may in its sole discretion elect to have Tenant's exercise of this option be of no effect, in which case this lease shall expire at the end of the initial term.

(f) Tenant shall have no right to exercise the option to renew the term of this lease (i) during the time commencing from the date Landlord gives to Tenant a notice of default pursuant to Paragraph 20, above, and continuing until the noncompliance alleged in said notice of default is cured, or (ii) during the period of time commencing on the day after a monetary obligation to Landlord is due from Tenant and unpaid (without any necessity for notice thereof to Tenant) and continuing until the obligation is paid, or (iii) in the event that Landlord has given to Tenant two (2) or more notices of default under Paragraph 20, above, whether or not the defaults are cured, during the twelve (12) month period of time immediately prior to the time that Tenant attempts to exercise the option to renew the lease, or (iv) if Tenant has committed any non-curable breach, or is otherwise in default of any of the terms, covenants or conditions of this lease.

(g) The period of time within which the option to renew must be exercised shall not be renewed or enlarged by reason of Tenant's inability to exercise the option because of the provision of Paragraph 56(f), above.

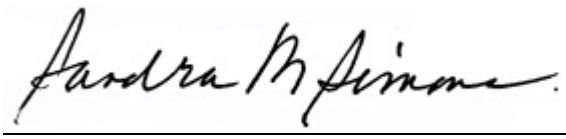
(h) All right of Tenant to exercise the option to renew the term hereof described in this Paragraph shall terminate without notice and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the option, if, during the initial term of this lease, (i) Tenant fails to pay Landlord a monetary obligation of Tenant for a period of thirty (30) days after such obligation becomes due (without any necessity of Landlord to give notice thereof to Tenant), or (ii) Landlord gives to Tenant three (3) or more notices of default under Paragraph 20 above, whether or not the defaults are cured during the term of the lease, or (iii) Tenant has committed any non-curable breach.

[Signature Page Follows]

IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this lease on the date first above written.

Landlord:

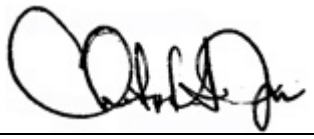
McCandless limited LLC, a
California Limited Liability Company

By: 
Sandra Simons or Jett McCandless, Managers

Date: 7/16/10

Tenant:

AirXpanders, Inc.,
a Delaware corporation

By: 
(Signature)

Christopher S. Jones
(Name)

President
(Title)

Date: 7/15/10

EXHIBIT "A"

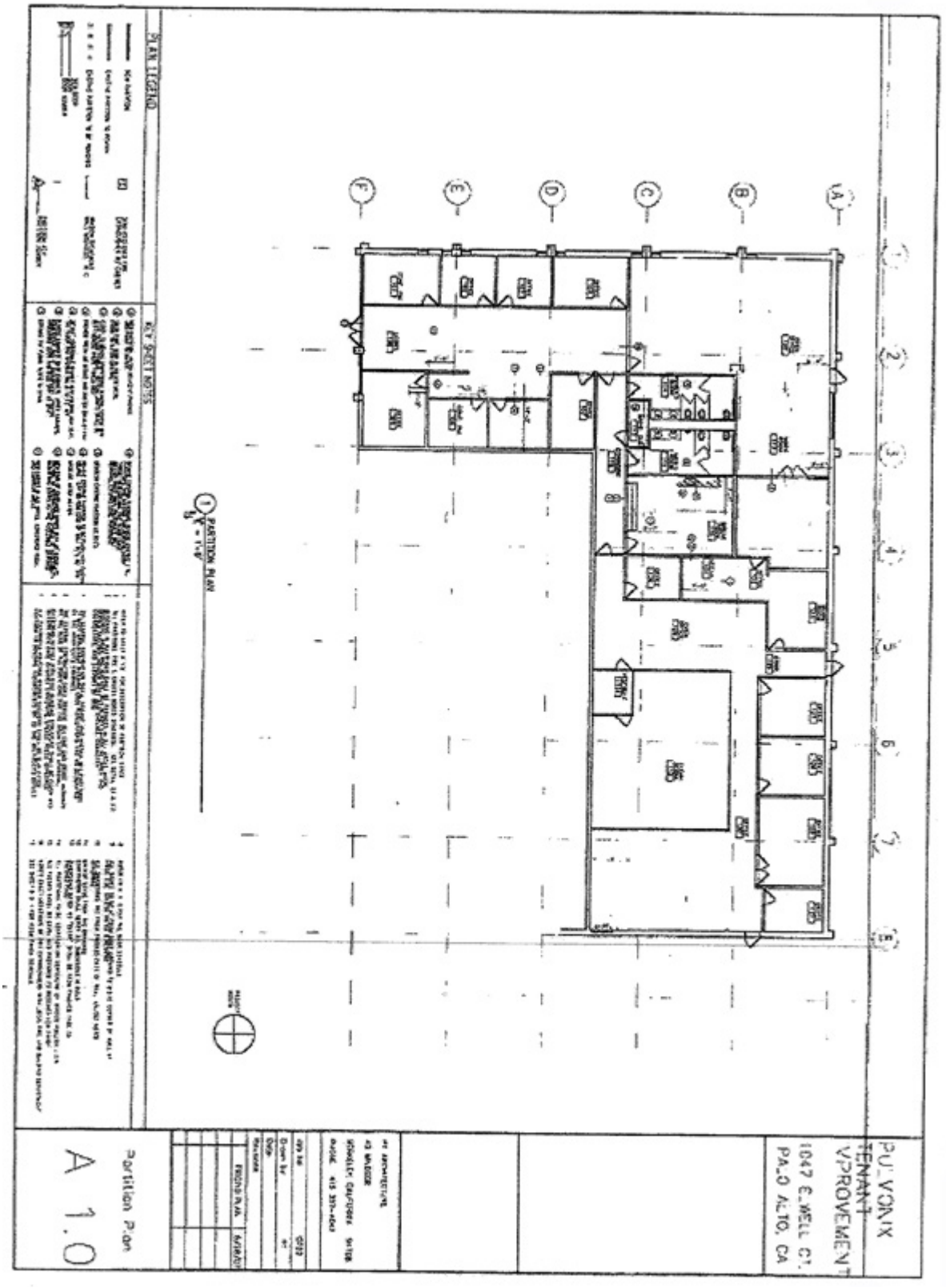


EXHIBIT B

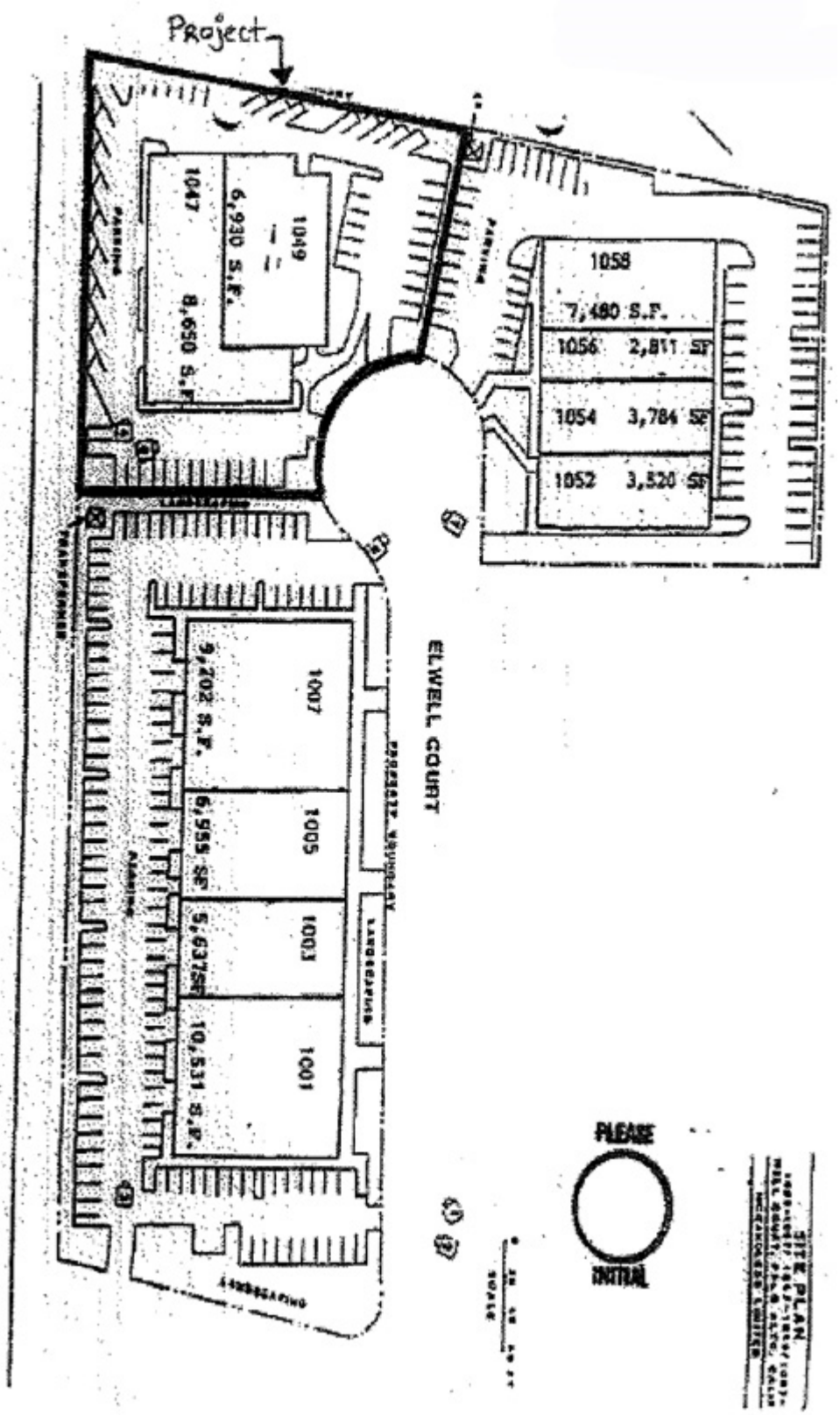


EXHIBIT "C"
TURNKEY WORK LETTER AGREEMENT
AIRXPANDERS, INC.
1047 ELWELL COURT, PALO ALTO

CONSTRUCTION **EXHIBIT C**

THIS WORK LETTER AGREEMENT (hereinafter "Exhibit C") is attached to and forms a part of that certain Lease dated as of July , 2010 ("Lease") by and between **McCANDLESS LIMITED, LLC**, a California limited liability company ("Landlord"), and **AIRXPANDERS, INC.**, a Delaware Corporation ("Tenant"), pursuant to which Landlord leases to Tenant those certain premises located at 1047-1049 Elwell Court, Palo Alto, California consisting of approximately 8,650 square feet ("Premises"). All capitalized terms used herein shall have the meaning ascribed to them in the Lease unless otherwise defined below. The Premises shall be improved in accordance with the following:

1. Existing Improvements:

As set forth in Paragraphs 54 and 55 of the Lease, Tenant accepts the Premises in their existing condition and the improvements constructed therein (the "Existing Improvements"), and Tenant hereby approves the same as installed, subject only to Landlord's construction of the Tenant Improvements specified herein, at Landlord's expenses, and such changes as may subsequently be agreed upon by Landlord and Tenant in the manner set forth in this Exhibit C.

2. Tenant Improvements/Landlord Contribution:

As used herein the "Tenant Improvements" shall mean the professional cleaning of the Premises and the removal of three (3) walls (one to combine existing offices into a conference room and two others to open space) and to improve the conference room formed by the removed wall (with receptacles on walls (not floors) and one telephone (date outlet) and with replaced carpet). The reasonable cost incurred by Landlord for the Tenant Improvements shall be referenced to herein as the "Landlord Contribution".

Landlord shall complete the Tenant Improvements at Landlord's sole cost and expense. Tenant Improvements shall not include the installation of cubicles, compressor, wiring, maintenance and removal of telephone and other communications systems, data, cabling, alarm and/or security systems or any other systems, and all costs and expense associated therewith, all of which shall be the sole responsibility of Tenant. In connection with the construction and installation of the Tenant Improvements, Landlord and/or Landlord's general contractor shall have no obligation to move any of Tenant's property located in or about the Premises including, but not limited to, furniture, inventory and trade fixtures, at the time of such construction and installation. If, at the time of construction and installation of Tenant Improvements, Tenant has

property located in or about the Premises that inhibits or prevents in any way the construction or installation of the Tenant Improvements, Tenant shall immediately, upon receipt of notification therefore from Landlord or Landlord's general contractor, at Tenant's sole cost and expense, move such property to another location or, upon the receipt of Landlord's prior approval, to another location within the Project designated by Landlord in Landlord's sole discretion. If, at the time of construction and installation of Tenant Improvements, Tenant has property located in or about the Premises, Landlord or Landlord's general contractor shall incur no liability to Tenant or any other party in the event such property is damaged, destroyed or stolen during the construction and installation of the Tenant Improvements.

3. Tenant Improvement Design Schedule:

Once building and all other necessary permits, if any, are obtained, Landlord shall complete construction of the Tenant Improvements in a diligent, timely and workmanlike manner. Delays in the construction or installation of the Tenant Improvements due to any changes required by Tenant, or failures by Tenant to perform its obligations under this Lease and Exhibit C, or delays caused by entry onto the Premises by Tenant or its agents, employees or contractors, or delays for any other reason outside of the reasonable control of Landlord, shall not delay commencement of the Term or Tenant's obligation to pay rent or to make other payments due Landlord under the Lease.

4. Changes by Tenant:

Tenant may request changes, deletions or additions to the Tenant Improvements; provided, however, that the effectiveness of any such requested change, deletion or addition shall be subject to written approval by an authorized representative of Landlord and to obtaining any required governmental permits or other approvals. If any such changes increase the cost of constructing or installing the Tenant Improvements, Tenant shall immediately pay to Landlord, within five (5) business days of demand, the full amount of such increase in the cost of constructing or installing the additional Tenant Improvements. If such amount is not received within such five (5) business day period, Landlord shall not be required to construct or install the change requested by Tenant.

5. Changes By Authority:

Tenant agrees that if any change, deletion or addition to any of the improvements proposed to be constructed or installed is required by any governmental authority in connection with obtaining any governmental permit or approval, or otherwise, then such change, deletion or addition shall promptly be made at Tenant's expense. Failure to obtain any required governmental approval or permit for the Tenant Improvements desired by Tenant shall in no way be cause for Tenant to terminate the Lease.

6. Punch List:

Within thirty (30) days after commencement of the term, Tenant shall deliver to Landlord a list of items ("Punch List") that Tenant reasonably believes Landlord should complete or correct in order for the Premises to be acceptable. Landlord shall commence to complete or correct the items as soon as possible. If Tenant does not deliver the Punch List to Landlord within the thirty (30) day period, Tenant shall be deemed to have accepted the Premises and approved the construction. Nothing in this paragraph 6 shall delay the commencement of the Term or Tenant's obligation to pay rent or to make other payments due Landlord under the Lease.

7. No Third Party Beneficiaries:

Under no circumstances shall this Exhibit C be construed or confer upon any third person or entity any right or cause of action against the Landlord or Tenant, including but not limited to, all contractors, subcontractors, suppliers, laborers or materialmen.

8. Inducement Recapture:

In the event the Lease is terminated prior to the expiration of the term then in effect by reason of Tenant's default, the unamortized portion of the Landlord Contribution shall be deemed sums advanced by Landlord on Tenant's behalf and such unamortized portion (in accordance with the formula set forth below) shall be due from Tenant as additional rent payable in a lump sum as an additional remedy of Landlord under the Lease. The unamortized portion of the Landlord Contribution shall be computed by: (a) multiplying (i) the number of months remaining in the term without consideration for any future extended terms by (ii) the amount of the Landlord Contribution (plus interest thereon at five percent (5%) per annum) and (b) dividing the product of (i) and (ii) by the number of months from the commencement date of default to the expiration date of the Lease.

9. Ownership of Tenant Improvements:

All Tenant Improvements shall become a part of the Premises, shall be the property of Landlord and, unless Landlord elects otherwise as provided in the Lease, shall be surrendered by Tenant with the Premises, without any compensation to Tenant, at the expiration or termination of the Lease.

Exhibit 10.12

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (hereinafter "First Amendment") is made this 1st day of May 2013 by and between McCANDLESS LIMITED, LLC, a California limited liability company (Landlord") and AIRXPANDERS, INC., a Delaware corporation ("Tenant").

RECITALS

A. Tenant currently leases from Landlord approximately eight thousand six hundred and fifty (8,650) square feet of space located at 1047 Elwell Court, Palo Alto, California (the "Premises") pursuant to that certain Standard Industrial Lease dated July 14, 2010 ("Lease").

B. The term of the Lease expires on July 31, 2013 and Tenant desires to extend the term by three (3) years until July 31, 2016.

C. Landlord is willing to so extend the term of the Lease respecting the Premises on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals and Exhibits. The above Recitals are true and accurate and the Recitals are incorporated herein by reference.

2. Term. Commencing August 1, 2013, the term of the Lease respecting the Premises shall be extended for three (3) additional years until July 31, 2016. The period commencing August 1, 2013 and ending on July 31, 2016 shall be referred to herein as the First Extended Term.

3. Basic Rent. As of August 1, 2013, the monthly basic rent as described in Paragraph 4(a) of the Lease shall be twelve thousand and five hundred and forty-two and 50/100 dollars ($12,542.50) per month as follows:

August 1, 2013 through July 31, 2014	$12,542.50 per month
August 1, 2014 through July 31, 2015	$12,918.78 per month
August 1, 2015 through July 31, 2016	$13,306.34 per month

4. Brokers. Each party represents that it has not had any dealings with any real estate broker, finder or other person with respect to this First Amendment, and that there are no leasing commissions to be paid by Landlord or Tenant in connection with this transaction. Each party hereto shall hold harmless the other party from all damages, loss or liability resulting from any claims that may be asserted against the other party by any broker, finder or other person with whom such party has dealt, or purportedly has dealt, in connection with this transaction.

5. Option to Extend Term. Notwithstanding the three year extension of the term as set forth in this First Amendment, Tenant shall retain the option to extend the term as described in

paragraph 56 of the Lease except that (i) such extension, if exercised, shall be referred to as the "Second Extended Term", (ii) Tenant shall deliver its notice of Tenant's exercise of its option to extend not less than six (6) lease months, nor more than twelve (12) months, prior to the expiration of the First Extended Term, and (iii) all references to the "initial term" set forth in paragraph 56 shall likewise be read to refer to the First Extended Term.

6. Restatement of Other Lease Terms. Except as specifically modified herein, all other terms, covenants and conditions of the Lease, including the option to extend the term as described in paragraph 56 (as modified above) and Tenant's obligation to pay operating costs as described in paragraphs 4 (b) and 16, shall remain in full force and effect.

7. Capitalized Terms. All capitalized terms used in this First Amendment shall possess the same meaning ascribed to that term in the Lease except as may be provided otherwise in this First Amendment.

8. Conflicts. In the event of any conflict between the Lease on the one hand (including any interlineations) and this First Amendment on the other, the terms of this First Amendment shall govern and control.

9. Counterparts. This First Amendment may be executed in identical counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

LANDLORD:

MCCANDLESS LIMITED, LLC
a California limited liability company

By: _____
Jett A. McCandless or Sandra M. Simons as
Managing Members

TENANT:

AIRXPANDERS, INC.
a Delaware corporation

By: _____.
(Signature)

By: Scott Dodson .
(Printed Name)

By: President / CEO .
(Title)

Exhibit 10.13

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (hereinafter "***Second Amendment***") is made this 1st day of July 2015 by and between **MCCANDLESS LIMITED, LLC,** a California limited liability company ("***Landlord***") and **AIRXPANDERS, INC.**, a Delaware corporation ("***Tenant***").

RECITALS

A. Tenant currently leases from Landlord approximately eight thousand six hundred and fifty (8,650) square feet of space located at 1047 Elwell Court, Palo Alto, California (the "***Premises***") pursuant to that certain Standard Industrial Lease dated July 14, 2010 (the "***Original Lease***") and that certain First Amendment to Lease dated May 1, 2013 (the "***First Amendment***", and together with this Second Amendment, collectively, the "***Lease***").

B. The term of the Lease for the Premises expires on July 31, 2016 and Tenant desires to extend the term by three (3) years and two months until September 30, 2019.

C. Tenant also desires to expand the Premises to include the five thousand six hundred and ninety-two (5,692) square foot space located at 1003 Elwell Court, Palo Alto, California as shown on Exhibit A. The portion of the Premises located at 1003 Elwell Court shall be referred to herein as the "***1003 Premises***" and the portion of the Premises located at 1047 Elwell Court shall be referred to herein as the "***1047 Premises***". The 1047 Premises are situated in the building located at 1047-1049 Elwell Court in Palo Alto as depicted on Exhibit B. The 1003 Premises shall be situated in a separate but contiguous building located at 1001-1007 Elwell Court in Palo Alto, also as depicted on Exhibit B. Together, the 1003 Premises and the 1047 Premises shall total fourteen thousand three hundred and forty-two (14,342) square feet and collectively be referred to herein as the "***Premises***".

D. Tenant desires to expand the Project to include the parcel upon which is situated the building located at 1001-1007 Elwell Court within which the 1003 Premises is located. Notwithstanding the foregoing, the operating expenses for both the 1003 Premises and the 1047 Premises, while billed collectively, shall be calculated separately based upon the costs specific to each parcel and building.

E. Tenant desires to add a dishwasher and garbage disposal to the kitchen area of the 1003 Premises that will involve plumbing work and extensive remodeling. Landlord's general contractor estimates the cost of such kitchen remodeling (the "***1003 Lunchroom Tenant Improvements***") to amount to approximately fifteen thousand and 00/100 ($15,000) dollars.

F. Tenant desires to connect the voice and data communications between the 1003 Premises and the 1047 Premises. Tenant's IT specialists estimate that such connection will require approximately three months. Accordingly, the term for the 1003 Premises shall not commence until October 1, 2015, although Tenant shall be granted prior access subject to terms defined below.

G. Landlord and Tenant desire to adjust the monthly basic rent as described in Paragraph 6 and **Exhibit D**, both of this Second Amendment.

H. Landlord is willing to so extend the term of the Lease, expand the Premises, consent to the 1003 Premises 1003 Lunchroom Tenant Improvements and grant early access on the terms and conditions set forth herein.

Now, THEREFORE, in consideration of the above recitals and the mutual covenants and agreements contained herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals and Exhibits. The above Recitals and Exhibits are true and accurate and the Recitals are incorporated herein by reference.

2. Term. The term of the Lease is hereby extended for three (3) additional years and two (2) additional months until September 30, 2019. The period commencing August 1, 2016 and ending on September 30, 2019 shall be referred to herein as the "***second extended term***". The term of the Lease with respect to the 1003 Premises shall commence as of October 1, 2015.

3. Early Occupancy. Tenant may, at its option, take early possession of the 1003 Premises subject to the following conditions: (i) Landlord has completed the Tenant Improvement Work as described in paragraph 10 and Exhibit C below, (ii) Landlord has completed cleaning, touch-up and repair work as described as paragraph 9 below, (iii) Landlord and Tenant have executed and delivered this Second Amendment, and (iv) Tenant has delivered to Landlord written evidence that Tenant has satisfied Tenant's insurance requirements as set forth in paragraph 11 of the Lease. Notwithstanding such early possession, Tenant shall not be required to pay basic rent or operating costs with respect to the 1003 Premises prior to the October 1, 2015 commencement of the term with respect to the 1003 Premises, but Tenant's possession of the 1003 Premises pursuant to this paragraph shall be subject to all other terms and conditions of the Lease. If Tenant exercises its right to take possession of the 1003 Premises pursuant to this paragraph, Landlord shall not be liable for any interference with Tenant's business which may result during the period in which Tenant Improvements (as defined in the Construction Work Letter Agreement attached hereto as Exhibit C) are being made to the Premises or cleaning, touch-up or repairs occur. Notwithstanding the above, Tenant's IT personnel may have access to the 1003 Premises during Tenant Improvement construction and Landlord's cleaning, touch-up and repair work so that Tenant's IT contractor's may effectively and timely install Tenant's voice and data IT system.

4. Project. The Project, as defined in the preamble of the Original Lease, is hereby expanded to include that parcel containing the building located at 1001-1007 Elwell Court.

5. Premises. As of October 1, 2015, the Premises shall be expanded from eight thousand six hundred and fifty (8,650) square feet located in the 1047 Premises to fourteen thousand four hundred and forty-two (14,342) square feet located in both the 1047 Premises and the 1003 Premises together.

6. Basic Rent. The monthly basic rent as described in Paragraphs 4 (a) and 5 of the Original Lease is hereby revised in accordance with the following schedule as further described in the attached **Exhibit D**.

July 1, 2015 through July 31, 2015	$12,918.78 per month
August 1, 2015 through September 30, 2015	$13,306.34 per month
October 1, 2015 through July 31, 2016	$26,113.34 per month
August 1, 2015 through September 30, 2016	$32,269.50 per month
October 1, 2016 through September 30, 2017	$33,237.58 per month
October 1, 2017 through September 30, 2018	$34,234.71 per month
October 1, 2018 through September 30, 2019	$35,261.75 per month

7. Operating Costs. As of October 1, 2015, Tenant's percentage share of operating costs shall be increased from 55.52% of the building and parcel within which the 1047 Premises is situated to also include 17.58% of the building and parcel within which the 1003 Premises is situated. Although the operating costs for each parcel shall be calculated separately, the combined operating expenses may be paid jointly. The operating costs for each parcel and building thereon shall be determined annually according to paragraphs 4(b) and 16 of the Original Lease.

8. Security Deposit. Along with the delivery of this executed Second Amendment to Lease, Tenant shall increase the security deposit as described in paragraph 4(e) of the Original Lease by Twelve Thousand and Eight Hundred and Seven and 00/100 ($12,807.00) Dollars from Twelve Thousand and Ten and 50/100 Dollars ($12,010.50) to Twenty Four Thousand Eight Hundred and Seventeen and 50/100 ($24,817.50) Dollars.

9. Touch-Up and Repairs. As soon as Tenant Improvements as described in paragraph 10 and Exhibit C below have been completed, Landlord shall, respecting the 1003 Premises, at Landlord's sole expense, (i) professionally clean the carpet, windows and blinds, (ii) replace damaged ceiling tiles, (iii) touch-up the walls and painted surfaces as needed, (iv) clean-up and make repairs necessitated by the Tenant Improvement construction work and (v) such cleaning, touch-up or repair as reasonably needed to deliver the 1003 Premises in good working order and condition commensurate with class A office space.

10. Tenant Improvements. Tenant Improvements shall be constructed in accordance with Exhibit C, attached hereto.

11. Brokers. Each party represents that it has not had any dealings with any real estate broker, finder or other person with respect to this Second Amendment, and that there are no leasing commissions to be paid by Landlord or Tenant in connection with this transaction, except to Cornish and Carey Commercial, d.b.a. Newmark Cornish and Carey (whose commission shall be paid by Landlord in accordance with a separate agreement between Landlord and such broker). Each party hereto shall hold harmless the other party from all damages, loss or liability resulting from any claims that may be asserted against the other party by any broker, finder or other person with whom such party has dealt, or purportedly has dealt, in connection with this transaction.

12. Restatement of Other Lease Terms. Except as specifically modified herein, all other terms, covenants and conditions of the Original Lease and First Amendment, including Tenant's obligation to pay operating costs as described in paragraphs 4 (b) and 16, shall remain in full force and effect.

13. Capitalized Terms. All capitalized terms used in this Second Amendment shall possess the same meaning ascribed to that term in the Original Lease except as may be provided otherwise in this Second Amendment.

14. Conflicts. In the event of any conflict between the Original Lease and First Amendment on the one hand (including any interlineations) and this Second Amendment on the other, the terms of this Second Amendment shall govern and control.

15. Counterparts. This Second Amendment may be executed by facsimile or scanned e-mail in identical counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the day and year first above written.

LANDLORD:

MCCANDLESS LIMITED, LLC
a California limited liability company

By: /s/ Sandra M. Simons
Jett A. McCandless or Sandra M. Simons as
Managing Members

TENANT:

AIRXPANDERS, INC.
a Delaware corporation

By: /s/ Scott Dodson
Scott Dodson, President and CEO

EXHIBIT D

The monthly basic rent for the 1003 Premises shall commence on October 1, 2015 at the rate of $2.25 per square foot, amounting to $12,807.00 (5,692 SF x $2.25/SF) and shall be increased annually by three percent (3%). The monthly basic rent for the 1047 Premises shall continue as agreed in the First Amendment to Lease in the amount of $12,918.78 (8,650 SF x $1.49/SF) for the months of July and August 2015, increasing by three percent (3%) to $ 13, 306.34 (8,650 SF x $ 1.54/SF) from August 1, 2015 through July 31, 2016, the end of the first extended term for the 1047 Premises. Thereafter, the monthly basic rent per square foot for the 1047 Premises shall catch up with that of the 1003 Premises so that both spaces adjust in parallel. Accordingly, the monthly basic rent for the 1047 Premises shall increase to $19,462.50 for the months of August and September 2016 and then increase annually by three percent (3%) each succeeding October 1. The table below describes the basic monthly rent schedule for the spaces separately and combined.

Monthly Basic Rent Schedule

Lease Months	1003 Premises	1047 Premises	Combined	$/SF
7/1/15 – 7/31/15	$ 0	$ 12,918.78	$12,918.78	$1.49
8/1/15 – 9/30/15	$ 0	$ 13,306.34	$13,306.34	$1.54
10/1/15 – 7/31/16	$ 12,807.00	$ 13,306.34	$26,113.34	$1.82
8/1/16 – 9/30/16	$ 12,807.00	$ 19,462.50	$32,269.50	$2.25
10/1/16 – 9/30/17	$ 13,191.21	$ 20,046.37	$33,237.58	$2.32
10/1/17 – 9/30/18	$ 13,586.95	$ 20,647.77	$34,234.71	$2.39
10/1/18 – 9/30/19	$ 13,994.55	$ 21,267.20	$35,261.75	$2.46

Exhibit 10.14

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this "**Agreement**") dated as of is made by and between **AIRXPANDERS, INC.,** a Delaware corporation (the "**Company**"), and ("**Indemnitee**").

RECITALS

A. The Company desires to attract and retain the services of highly qualified individuals as directors, officers, employees and agents.

B. The Company's bylaws (the "**Bylaws**") require that the Company indemnify its directors, and empowers the Company to indemnify its officers, employees and agents, as authorized by the Delaware General Corporation Law, as amended (the "**Code**"), under which the Company is organized and such Bylaws expressly provide that the indemnification provided therein is not exclusive and contemplates that the Company may enter into separate agreements with its directors, officers and other persons to set forth specific indemnification provisions.

C. Indemnitee does not regard the protection currently provided by applicable law, the Company's governing documents and available insurance as adequate under the present circumstances, and the Company has determined that Indemnitee and other directors, officers, employees and agents of the Company may not be willing to serve or continue to serve in such capacities without additional protection.

D. The Company desires and has requested Indemnitee to serve or continue to serve as a director, officer, employee or agent of the Company, as the case may be, and has proffered this Agreement to Indemnitee as an additional inducement to serve in such capacity.

E. Indemnitee is willing to serve, or to continue to serve, as a director, officer, employee or agent of the Company, as the case may be, if Indemnitee is furnished the indemnity provided for herein by the Company.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) Agent. For purposes of this Agreement, the term "agent" of the Company means any person who: (i) is or was a director**,** officer, employee or other fiduciary of the Company or a subsidiary of the Company; or (ii) is or was serving at the request or for the convenience of, or representing the interests of, the Company or a subsidiary of the Company, as a director, officer, employee or other fiduciary of a foreign or domestic corporation, partnership, joint venture, trust or other enterprise.

(b) Expenses. For purposes of this Agreement, the term "expenses" shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type

or nature whatsoever (including, without limitation, all attorneys', witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature), actually and reasonably incurred by Indemnitee in connection with the investigation, defense or appeal of a proceeding or establishing or enforcing a right to indemnification under this Agreement, the Code or otherwise, and amounts paid in settlement by or on behalf of Indemnitee, but shall not include any judgments, fines or penalties actually levied against Indemnitee for such individual's violations of law. The term "expenses" shall also include reasonable compensation for time spent by Indemnitee for which he is not compensated by the Company or any subsidiary or third party (i) for any period during which Indemnitee is not an agent, in the employment of, or providing services for compensation to, the Company or any subsidiary; and (ii) if the rate of compensation and estimated time involved is approved by the directors of the Company who are not parties to any action with respect to which expenses are incurred, for Indemnitee while an agent of, employed by, or providing services for compensation to, the Company or any subsidiary.

(c) Proceedings. For purposes of this Agreement, the term "proceeding" shall be broadly construed and shall include, without limitation, any threatened, pending, or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, and whether formal or informal in any case, in which Indemnitee was, is or will be involved as a party or otherwise by reason of: (i) the fact that Indemnitee is or was a director or officer of the Company; (ii) the fact that any action taken by Indemnitee or of any action on Indemnitee's part while acting as director, officer, employee or agent of the Company; or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses may be provided under this Agreement.

(d) Subsidiary. For purposes of this Agreement, the term "subsidiary" means any corporation or limited liability company of which more than 50% of the outstanding voting securities or equity interests are owned, directly or indirectly, by the Company and one or more of its subsidiaries, and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary.

(e) Independent Counsel. For purposes of this Agreement, the term "independent counsel" means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party, or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "independent counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

2. Agreement to Serve. Indemnitee will serve, or continue to serve, as a director, officer, employee or agent of the Company or any subsidiary, as the case may be, faithfully and

to the best of his or her ability, at the will of such corporation (or under separate agreement, if such agreement exists), in the capacity Indemnitee currently serves as an agent of such corporation, so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the bylaws or other applicable charter documents of such corporation, or until such time as Indemnitee tenders his or her resignation in writing; provided, however, that nothing contained in this Agreement is intended as an employment agreement between Indemnitee and the Company or any of its subsidiaries or to create any right to continued employment of Indemnitee with the Company or any of its subsidiaries in any capacity.

The Company acknowledges that it has entered into this Agreement and assumes the obligations imposed on it hereby, in addition to and separate from its obligations to Indemnitee under the Bylaws, to induce Indemnitee to serve, or continue to serve, as a director, officer, employee or agent of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Company.

3. Indemnification.

(a) Indemnification in Third Party Proceedings. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding, for any and all expenses, actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such proceeding.

(b) Indemnification in Derivative Actions and Direct Actions by the Company. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding by or in the right of the Company to procure a judgment in its favor, against any and all expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement, or appeal of such proceedings.

4. Indemnification of Expenses of Successful Party. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any proceeding or in defense of any claim, issue or matter therein, including the dismissal of any action without prejudice, the Company shall indemnify Indemnitee against all expenses actually and reasonably incurred in connection with the investigation, defense or appeal of such proceeding.

5. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any expenses actually and reasonably incurred by Indemnitee in the investigation, defense, settlement or appeal of a proceeding, but is precluded by applicable law or the specific terms of this Agreement to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

6. Advancement of Expenses. To the extent not prohibited by law, the Company shall advance the expenses incurred by Indemnitee in connection with any proceeding, and such advancement shall be made within twenty (20) days after the receipt by the Company of a statement or statements requesting such advances (which shall include invoices received by Indemnitee in connection with such expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice) and upon request of the Company, an undertaking to repay the advancement of expenses if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. Advances shall be unsecured, interest free and without regard to Indemnitee's ability to repay the expenses. Advances shall include any and all expenses actually and reasonably incurred by Indemnitee pursuing an action to enforce Indemnitee's right to indemnification under this Agreement, or otherwise and this right of advancement, including expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Indemnitee acknowledges that the execution and delivery of this Agreement shall constitute an undertaking providing that Indemnitee shall, to the fullest extent required by law, repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. The right to advances under this Section shall continue until final disposition of any proceeding, including any appeal therein. This Section 6 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 10(b).

7. Notice and Other Indemnification Procedures.

(a) Notification of Proceeding. Indemnitee will notify the Company in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any proceeding or matter which may be subject to indemnification or advancement of expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise.

(b) Request for Indemnification and Indemnification Payments. Indemnitee shall notify the Company promptly in writing upon receiving notice of any demand, judgment or other requirement for payment that Indemnitee reasonably believes to be subject to indemnification under the terms of this Agreement, and shall request payment thereof by the Company. Indemnification payments requested by Indemnitee under Section 3 hereof shall be made by the Company no later than sixty (60) days after receipt of the written request of Indemnitee. Claims for advancement of expenses shall be made under the provisions of Section 6 herein.

(c) Application for Enforcement. In the event the Company fails to make timely payments as set forth in Sections 6 or 7 (b) above, Indemnitee shall have the right to apply to any court of competent jurisdiction for the purpose of enforcing Indemnitee's right to indemnification or advancement of expenses pursuant to this Agreement. In such an

enforcement hearing or proceeding, the burden of proof shall be on the Company to prove that indemnification or advancement of expenses to Indemnitee is not required under this Agreement or permitted by applicable law. Any determination by the Company (including its Board of Directors, stockholders or independent counsel) that Indemnitee is not entitled to indemnification hereunder, shall not be a defense by the Company to the action nor create any presumption that Indemnitee is not entitled to indemnification or advancement of expenses hereunder.

(d) Indemnification of Certain Expenses. The Company shall indemnify Indemnitee against all expenses incurred in connection with any hearing or proceeding under this Section 7 unless the Company prevails in such hearing or proceeding on the merits in all material respects.

8. Assumption of Defense. In the event the Company shall be requested by Indemnitee to pay the expenses of any proceeding, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, or to participate to the extent permissible in such proceeding, with counsel reasonably acceptable to Indemnitee. Upon assumption of the defense by the Company and the retention of such counsel by the Company, the Company shall not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that Indemnitee shall have the right to employ separate counsel in such proceeding at Indemnitee's sole cost and expense. Notwithstanding the foregoing, if Indemnitee's counsel delivers a written notice to the Company stating that such counsel has reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or the Company shall not, in fact, have employed counsel or otherwise actively pursued the defense of such proceeding within a reasonable time, then in any such event the fees and expenses of Indemnitee's counsel to defend such proceeding shall be subject to the indemnification and advancement of expenses provisions of this Agreement.

9. Insurance. To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company or of any subsidiary ("D&O Insurance"), Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has D&O Insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

10. Exceptions.

(a) Certain Matters. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee on account of any proceeding with respect to (i) remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law (and, in this respect, both the Company and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising

under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication, as indicated in Section 10(d) below); (ii) a final judgment rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase or sale by Indemnitee of securities of the Company against Indemnitee or in connection with a settlement by or on behalf of Indemnitee to the extent it is acknowledged by Indemnitee and the Company that such amount paid in settlement resulted from Indemnitee's conduct from which Indemnitee received monetary personal profit, pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, or other provisions of any federal, state or local statute or rules and regulations thereunder; (iii) a final judgment or other final adjudication that Indemnitee's conduct was in bad faith, knowingly fraudulent or deliberately dishonest or constituted willful misconduct (but only to the extent of such specific determination); or (iv) on account of conduct that is established by a final judgment as constituting a breach of Indemnitee's duty of loyalty to the Company or resulting in any personal profit or advantage to which Indemnitee is not legally entitled. For purposes of the foregoing sentence, a final judgment or other adjudication may be reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement.

(b) Claims Initiated by Indemnitee. Any provision herein to the contrary notwithstanding, the Company shall not be obligated to indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought by Indemnitee against the Company or its directors, officers, employees or other agents and not by way of defense, except (i) with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or under any other agreement, provision in the Bylaws or Certificate of Incorporation or applicable law, or (ii) with respect to any other proceeding initiated by Indemnitee that is either approved by the Board of Directors or Indemnitee's participation is required by applicable law. However, indemnification or advancement of expenses may be provided by the Company in specific cases if the Board of Directors determines it to be appropriate.

(c) Unauthorized Settlements. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee under this Agreement for any amounts paid in settlement of a proceeding effected without the Company's written consent. Neither the Company nor Indemnitee shall unreasonably withhold consent to any proposed settlement; provided, however, that the Company may in any event decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Company is also a party in such proceeding and determines in good faith that such settlement is not in the best interests of the Company and its stockholders.

(d) Securities Act Liabilities. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee or otherwise act in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act of 1933, as amended (the "Act"), or in any registration statement filed with the SEC under the Act. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the Company to undertake in connection with any registration statement filed under the Act to

submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking.

11. Nonexclusivity and Survival of Rights. The provisions for indemnification and advancement of expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may at any time be entitled under any provision of applicable law, the Company's Certificate of Incorporation, Bylaws or other agreements, both as to action in Indemnitee's official capacity and Indemnitee's action as an agent of the Company, in any court in which a proceeding is brought, and Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as an agent of the Company and shall inure to the benefit of the heirs, executors, administrators and assigns of Indemnitee. The obligations and duties of the Company to Indemnitee under this Agreement shall be binding on the Company and its successors and assigns until terminated in accordance with its terms. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her corporate status prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement of expenses than would be afforded currently under the Company's Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Indemnitee shall not prevent the concurrent assertion or employment of any other right or remedy by Indemnitee.

12. Term. This Agreement shall continue until and terminate upon the later of: (a) five (5) years after the date that Indemnitee shall have ceased to serve as a director or and/or officer, employee or agent of the Company and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding by reason of his status as an Agent of the Company, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against an Indemnitee or an Indemnitee's estate, spouse, heirs, executors or

personal or legal representatives after the expiration of five (5) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such five-year period; provided, however, that if any shorter period of limitations is otherwise applicable to such cause of action, such shorter period shall govern.

13. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who, at the request and expense of the Company, shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

14. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by law.

15. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of the Agreement (including without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 14 hereof.

16. Amendment and Waiver. No supplement, modification, amendment, or cancellation of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

17. Notice. Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the parties hereto shall be in writing and, if by telegram, telecopy or telex, shall be deemed to have been validly served, given or delivered when sent, if by overnight delivery, courier or personal delivery, shall be deemed to have been validly served, given or delivered upon actual delivery and, if mailed, shall be deemed to have been validly served, given or delivered three (3) business days after deposit in the United States mail, as registered or certified mail, with proper postage prepaid and addressed to the party or parties to be notified at the addresses set forth on the signature page of this Agreement (or such other address(es) as a party may designate for itself by like notice). If to the Company, notices and demands shall be delivered to the attention of the Secretary of the Company.

18. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

20. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Company's Certificate of Incorporation, Bylaws, the Code and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the date first above written.

COMPANY

AIRXPANDERS, INC.

_____

INDEMNITEE

_____

SIGNATURE PAGE TO AIRXPANDERS, INC.
INDEMNIFICATION AGREEMENT

EXHIBIT 10.15

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

MANUFACTURING AND SUPPLY AGREEMENT

This Manufacturing and Supply Agreement (the "Agreement") is entered into as of the 4th day of January, 2017, by and between Vention Medical Costa Rica, S.A. with its principal place of business at Zona Franca Metropolitana, Barreal de Heredia 201-3006, Heredia, Costa Rica, ("Supplier") and AirXpanders, Inc., a Delaware corporation having its principal place of business at 1047 Elwell Court, Palo Alto, CA, 94303 ("Customer").

WHEREAS, Supplier has agreed to manufacture and supply to Customer those products listed in Exhibit A, attached and made apart hereof ("Products"), as well as any additions to said list as may be made in the future; and

WHEREAS, Customer desires that Supplier manufacture and supply the Products to Customer;

NOW, THEREFORE, in consideration of the terms and provisions of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Supplier and Customer (each a "party" and collectively the "parties"), agree as follows:

1.0 PURCHASE AND SALE OF PRODUCTS

1.1 Supplier's Obligations

(a) Supplier shall supply Customer and its Affiliates (as defined below) with its and their respective requirements for Product based upon Customer's specifications ("Product Specifications"). "Affiliates" means, with respect to a party, any entity or person which controls, is controlled by or is under common control with such party, where "control" means the power to direct or cause the direction of the management and policies of the subject entity, whether through the ownership of voting stock or partnership interest, by contract or otherwise.

(b) Supplier shall manufacture Products in an ISO certified class 8 facility in accordance with the Product Specifications and shall supply Products to Customer in accordance with the purchase orders submitted by Customer in accordance with Section 1.4 and the Quality Agreement. Supplier shall obtain and maintain all licenses and approvals required to manufacture Products in accordance with applicable laws and regulations, including GMP.

(c) Supplier shall agree to any reasonable and lawful modification to the Product Specifications requested by Customer in writing; **provided**, **however**, that Supplier shall (i) notify Customer within thirty (30) days after receipt of any such request of whether the requested change is feasible, along with an estimate of costs to implement such change and adjustment to Product pricing, (ii) negotiate in good faith with Customer the revised Product Specifications and the deliverables, compensation and schedule for implementation thereof, (iii) have a reasonable period of time to implement such Product Specification changes and (iv) be entitled to full reimbursement by Customer for any reasonable costs incurred by implementing

such changes, including any adjustment to pricing for Products, which may be required so as to [*], as agreed by the parties in advance of such implementation. Supplier shall not change the Product Specifications or the manufacturing process for Products without Customer's prior written consent.

(d) Supplier may not change raw materials suppliers without prior written consent of Customer. Supplier will give Customer prior written notice of any such proposed change within a reasonable time frame based upon the facts and circumstances.

(e) Supplier will deliver Product conforming to the Product Specifications on the delivery date set forth in each purchase order submitted by Customer, provided that such date is consistent with Section 1.4.

(f) Within sixty (60) days after the Effective Date, the parties will enter into a Quality Agreement related to the supply of Products under this Agreement (as amended in accordance with its terms, the "Quality Agreement"). In the event of a conflict between the Quality Agreement and this Agreement, the Quality Agreement will govern with respect to quality matters, and this Agreement will govern with respect to all other matters.

1.2 Customer's Purchase Obligations

(a) Subject to Section 1.8, Customer hereby grants to Supplier the exclusive right to manufacture the Products as set forth on Exhibit A attached hereto, with the exception of internal manufacturing that Customer may do on its own (itself or through its Affiliate). Subject to Section 1.8, Customer agrees to purchase all of its requirements of Products from Supplier, and from no other manufacturer, person or entity, except for Product manufactured by Customer or its Affiliate. For clarity, the foregoing does not prevent Customer from qualifying a third party manufacturer during the Term, so long as Customer does not purchase Product from such manufacturer during the Term except as permitted in Section 1.8.

(b) Upon execution of this Agreement, Customer shall provide Supplier with a non-binding [*] rolling forecast of Customer's expected purchase of Products, starting on the month that is [*] after the delivery of the forecast, with each month setting forth the units of each Product Customer expects to order from Supplier for delivery during such month. [*] thereafter, Customer shall provide updated [*] rolling forecasts, which will be non-binding until [*] before the first requested delivery date of Product, at which time the first [*] of each forecast will be binding on both parties, and the remaining [*] will be non-binding and solely for planning purposes. Commencing with the delivery of the first such binding forecast, Customer shall submit Purchase Orders for the first [*] of delivery of Product as specified in said rolling forecast; and thereafter, shall provide monthly Purchase Orders so that Supplier shall at all times have [*] of firm Purchase Orders for delivery.

(c) Supplier shall notify Customer promptly after the receipt of each forecast if Supplier anticipates that it will be unable to supply any quantities of Products set forth therein, and the parties shall promptly thereafter meet to discuss measures to ensure that Supplier will be

able to supply Customer's requirements of Products. Supplier shall implement all reasonable measures to remedy such supply inability as soon as possible and shall keep Customer updated on its progress in remedying such inability.

1.3 Capacity Planning/Safety Stock

(a) At the time of Customer's first submission of a purchase order for Supplier under Section 1.2(b), Supplier shall have the right to purchase raw materials equating to [*] supply based upon Customer's then-current forecast and purchase orders submitted, excluding the Customer supplied components and Sub-Assemblies as specified on Exhibit C and Exhibit D. Customer will supply Exhibit C and Exhibit D components and Sub-Assemblies to the Supplier until [*]; after which time the components and Sub-Assemblies in Exhibit C shall be managed and sourced directly through Supplier. Exhibit D will be provided to the Supplier at [*]. Supplier shall use the components supplied by Customer solely to manufacture and supply Products to Customer in accordance with the terms of this Agreement, and will not transfer such components to any third party without Customer's prior written consent.

(b) In addition to the [*] supply of Product specified above, Supplier may also be required to purchase up to a [*] supply of raw material due to vendor lead times. Supplier shall notify Customer of any such materials and applicable lead times prior to placing any order therefor. Customer shall bear full responsibility for any such raw material that remains unused at the termination of this Agreement that Supplier purchased based on Customer's forecasts and Suppliers' vendors' required lead times, unless Supplier is able to use said raw material for another project. In addition, if there is any work-in-process inventory based on Customer's Purchase Orders at the time of termination of this Agreement, Supplier shall complete the manufacture of the applicable Products for supply and delivery to Customer, and the terms of this Agreement applicable to supply of such Products to Customer and payment by Customer will survive such termination. Similarly, should Customer discontinue a Product or change the Product Specification for a Product, Customer shall reimburse Supplier (based on Supplier's actual costs) for said raw materials that Supplier purchased based on Customer's forecasts and Suppliers' vendors' required lead times and for any work-in-process inventory unless Supplier is able to utilize the raw materials or inventory for another project. Alternatively, Customer may elect to require Supplier to use the remaining raw materials to manufacture Products under prior Product Specifications rather than reimburse Supplier for its costs.

(c) Supplier and Customer agree to cooperate with each other and work jointly to establish and maintain a smooth and efficient timetable for the manufacture and supply of Products to Customer hereunder. Supplier shall supply all Product subject to Customer's binding commitments under Section 1.2(b), and shall use commercially reasonable efforts to supply Customer with all Product ordered in excess of such binding commitments, **however**, Supplier shall not be in breach of this Agreement or otherwise liable for any failure to supply quantities of Products in excess of purchase commitments provided by Customer under Section 1.2(b) above or for such failures of supply as are caused by reasons beyond Supplier's reasonable control to the extent provided in Section 10.2. In cases where Customer requires an unusual or

sudden increase in Products, which results in overtime expenses, expedite fees or air freight costs to Supplier, the Supplier must notify Customer in writing and get approval for overtime costs. Customer shall incur the agreed upon costs of such expenses and shall reimburse Supplier therefor.

1.4 Orders and Delivery

(a) Customer shall provide firm Purchase Orders as specified in Section 1.2 above. After the initial [*] Purchase Orders are received, Purchase Orders shall be due [*]. Each purchase order ("Purchase Order") shall specify the type and quantity of the Product to be delivered, as well as requested delivery dates and delivery location. All requested delivery dates shall provide for adequate lead time for the manufacture and delivery of Product ordered (taking into consideration the production schedule established jointly between the parties, which schedule shall be incorporated hereto and made a part of this Agreement). Each purchase order, or any acknowledgment thereof, invoice, bill of lading or acceptance by Customer, shall be governed by the terms of this Agreement.

(b) Supplier shall supply Product to Customer or its designee in accordance with the quantities, delivery dates and locations set forth in Purchase Orders submitted by Customer in accordance with Section 1.4(a), and in compliance with the Product Specifications and the terms of this Agreement and the Quality Agreement. Unless otherwise agreed to in writing by the parties, all Products manufactured for Customer shall be shipped to Customer FCA (Incoterms 2015) Supplier's dock. Supplier shall not ship Product to Customer or its designee until it has received written approval from Customer to release and ship. Title and risk of loss for Product shall pass to Customer upon delivery to the carrier at Supplier's dock. Customer shall arrange for transportation and insurance of Product from Supplier's dock and for all export and import clearances and licenses, provided that Supplier shall use all reasonable efforts to assist Customer in obtaining all needed export clearances and licenses.

(c) Supplier shall send invoices to Customer for delivered Product at the purchase price determined under Article 2. Unless subject to a bona fide dispute, Customer shall pay each invoice within [*] from the date of invoice. All payments and communications regarding the Product shall be delivered to Supplier at the address designated in Section 10.4. Failure to make payment on time shall result in interest accruing on any unpaid balance, from the due date until payment is made, at the rate of [*] per month or the highest interest rate allowable by law, whichever is less. Failure to pay may also result in delay of further shipments until all unpaid balances are paid in full.

1.5 Quality Control and Regulatory Compliance

(a) Supplier shall manufacture, test and supply the Products in accordance with (i) the Product Specifications; (ii) Supplier's standard manufacturing practices; and (iii) current Good Manufacturing Practices as required by the Federal Food, Drug and Cosmetic Act, as amended (the "Act") and the pertinent rules and regulations of the FDA, ISO 13485:2012 or current version, SOR 98/282 (Canada), the Medical Device Directive (Council Directive 93/42 EEC and 2007/47/EC), Active Implantable Medical Devices (AIMD 90/385/EEC) (collectively, "GMP").

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

(b) Supplier shall maintain all documents and records necessary for regulatory compliance and such documents and records shall be maintained for a period of fifteen (15) years from creation or, if longer, as required under applicable laws and regulations. Upon request and within a reasonable period of time, Supplier shall make such documents and records available for inspection by Customer, at any reasonable time during normal business hours. All such documents and records reviewed by Customer shall be Customer's Confidential Information if related specifically to a Product, and otherwise Supplier's Confidential Information, subject to the confidentiality provisions of Article 7 herein. Supplier shall notify Customer prior to disposal of any records, in case Customer would like to retain the records.

(c) In the event of a regulatory audit at Customer, which involves any Products, Customer shall notify Supplier of such audit within one (1) week thereof, if advance notice of audit has been communicated to Customer. Pursuant to such notice of audit, Supplier shall supply Customer with documents from its quality systems and appropriate GMP controls, related to the Products, within one (1) business day from a request by Customer. In addition, Supplier shall provide all documentation, information and assistance as reasonably requested by Customer from time to time in connection with Customer's regulatory submissions and communications related to Products.

(d) Supplier shall promptly notify Customer whenever a request for a plant inspection is received from the FDA or other regulatory authority and shall promptly advise Customer of any scheduled FDA (or other regulatory authority) inspection and the results thereof. In the event that an FDA or other regulatory authority audit occurs and the Customer's Product is the primary subject of the inspection, (a "for cause" inspection), then, the Customer be allowed to be on-site for the audit; [*]. exclusively A copy of Form 483 observation or other applicable report, which applies to Customer Products, shall be supplied to Customer promptly (and in any event within [*]) after the audit, and Supplier shall provide Customer with a copy of its response (which may be redacted if the response relates to areas outside of the Customer's Product). Supplier shall promptly take steps to remedy any valid deficiencies found by the FDA inspectors (or other regulatory authority) relating to the manufacture and packaging of Products and shall keep Customer updated on the progress of such remedial actions.

(e) In the event Customer shall be required or requested by any regulatory authority (or shall voluntarily decide in good faith) to recall any Product, Customer shall coordinate such recall. To the extent that a recall arises solely out of a [*], or is due to [*], and does not result from [*], then Supplier shall reimburse Customer for (i) the purchase price paid by Customer to Supplier for such recalled Product, and (ii) all of Customer's other direct reasonable costs and expenses actually incurred by Customer in connection with the recall, subject, in the case of clause (ii), to the limitations of liability set forth in Section 4.4. of this Agreement; provided that if a recall arises in part out of a [*], and in part for other reasons, then Supplier shall be responsible only for a pro rata share of such costs. If a recall is due to any

reason other than one that arises, in whole or in part, out of a [*], Customer shall pay all of the reasonable and documented costs and expenses of the recall, subject to the limitations of liability set forth in Section 4.4..

1.6 Plant Inspection

In addition to quality audits by Customer as provided in the Quality Agreement, Customer shall have the right to have qualified Customer employees present at Supplier's manufacturing facility, at mutually agreeable times during normal business hours, to (i) observe Supplier's installation and qualification of equipment and processes and manufacture of Products; (ii) inspect Supplier's facility and manufacturing procedures as relates to Products manufactured hereunder, and quality assurance/control procedures for compliance with GMP; and (iii) inspect Supplier's inventory, work-in-process, raw materials, GMP records, and such other matters as may be pertinent to proper quality assurance of Products to be delivered under the terms of this Agreement. Customer's personnel and/or duly authorized representatives exercising this right of inspection shall comply with all applicable Supplier rules and regulations provided by Supplier to Customer. [*].

1.7 Acceptance and Rejection

Except as provided herein, Customer shall accept all Product delivered in accordance with the terms and conditions of this Agreement. Customer may reject any shipment of Product if such shipment does not comply with the warranties set forth in Section 4.2. In order to reject a shipment, Customer must give written notice to Supplier within [*] after Customer's receipt of the shipment following sterilization thereof by or on behalf of Customer after shipment by Supplier, together with a reasonably detailed written statement of its reasons for rejection and, where appropriate, Product samples demonstrating the proposed nonconformance. If no such written notice is received by Supplier, then Customer shall be deemed to have accepted the shipment of Product; provided that with respect to any Product that fails to comply with the warranties in Section 4.2, which noncompliance was not discoverable upon Customer's reasonable inspection and testing following sterilization (a "Latent Defect"), Customer shall have the right to revoke such acceptance and reject such shipment within [*] after becoming aware of some noncompliance. In the event of proper rejection by Customer, Supplier shall, within a reasonable period of time (not to exceed [*]), notify Customer of whether it accepts Customer's notice of nonconformity. If Supplier disagrees with any proposed nonconformity by Customer, then both parties agree to cooperate and make every reasonable effort to resolve the disagreement, and if the parties are unable to resolve the disagreement within [*], the proposed nonconforming Product will be submitted to a mutually acceptable independent third party laboratory, whose decision will be final and binding on the parties. The party against whom the laboratory rules shall bear all costs charged by the laboratory. If Supplier or the laboratory confirms Customer's rejection, Supplier shall, at Customer's sole option, and in a reasonably prompt manner, either (i) replace (if it has not already done so) the nonconforming Product with conforming Product, or (ii) credit to Customer the purchase price and all other amounts (including shipping and insurance) paid by Customer therefor. Replacement shipments shall also be subject to the provisions and procedures contained in this

Agreement. If Supplier decides to recall (from Customer) any Product supplied to Customer, Supplier shall immediately notify Customer and will reimburse Customer for the price paid by Customer for the recalled Product, and any shipping and insurance paid by Customer.

1.8 Supply Interruption

(a) If Supplier fails to deliver to Customer by the requested delivery date at least [*] of any Product ordered under a Purchase Order that conforms to the Product warranties in Section 4.2, and Supplier does not cure such failure within [*] after written notice from Customer of such failure to deliver, and provided that the failure to deliver does not result from [*], then Customer shall have the right to cancel the applicable Purchase Order as to any undelivered amounts and manufacture any shortfall quantity of Product itself or purchase such quantity from a third party.

(b) If on [*] occasions, Supplier fails to deliver to Customer by the requested delivery date at least [*] of any Product ordered under a Purchase Order that conforms to the Product warranties in Section 4.2, and does not cure such failure within [*] after written notice from Customer of such failure to deliver, and provided that the failure to deliver does not result from [*], then in addition to the remedies under Section 1.8(a), (i) Customer shall have the right to manufacture itself or purchase from a third party all or a portion of its requirements for Products, until such time as Supplier reasonably demonstrates that it is able adequately to supply Customer's requirements for Products, (ii) Customer's exclusivity obligations and the exclusive rights granted to Supplier under Section 2.1(a) will terminate, and (iii) all of Customer's forecasts will become non-binding, and (iv) such failure by Supplier will be deemed a material breach of this Agreement.

(c) If on [*], as a result of causes beyond Supplier's reasonable control, Supplier fails to deliver to Customer by the requested delivery date at least [*] of any Product ordered under a Purchase Order that conforms to the Product warranties in Section 4.2, and does not cure such failure within [*] after written notice from Customer of such failure to deliver, then in addition to the remedies under Section 1.8(a), (i) Customer shall have the right to manufacture itself or purchase from a third party all or a portion of its requirements for Products, until such time as Supplier reasonably demonstrates that it is able adequately to supply Customer's requirements for Products, (ii) Customer's exclusivity obligations and the exclusive rights granted to Supplier under Section 2.1(a) will be suspended until Supplier reasonably demonstrates that it is able adequately to supply Customer's requirements for Products, and thereafter such exclusivity obligations will be subject to any agreements between Customer and a third party manufacturer to supply Product, and (iii) such failure by Supplier will not be deemed a material breach of this Agreement.

1.9 Disaster Recovery and Business Continuity Plan

At all times during the term of this Agreement, Supplier will maintain and adequately support a disaster recovery and business continuity program that ensures the

continuous operation and, in the event of an interruption, the recovery of all material business functions needed to meet Supplier's obligations under this Agreement. The disaster recovery and business continuity program will include at a minimum a detailed disaster recovery plan, which describes the management methodology, management team, emergency contact person and specific plans for potential risks that may disrupt Supplier's operations. The plan shall meet and be consistent with generally accepted industry standards. Upon demand, Supplier will provide a copy and overview of the plan to Customer.

1.10 **Vention Medical, Inc Relationship**

Vention Medical, Inc. hereby unconditionally and irrevocably guarantees to Customer the full performance of Supplier, as and when due hereunder, of all obligations of Supplier under this Agreement.

2. PRICE

2.1 Purchase Price

The initial pricing formula for Products purchased hereunder are set forth in Exhibit B, attached hereto, which prices are based on the formula provided in Exhibit B. Without limiting any other provision hereunder, at least [*] prior to the end of the first year of the Term and each year thereafter that this Agreement remains in effect, Supplier shall notify Customer of any proposed Product price increase or decrease for the next succeeding year, which increase or decrease will be made in accordance with Section 2.2. Any increase or decrease in Product unit price shall be applicable only to those product lots of Product for which the production process is completed after the change and cost becomes effective and shall remain in effect until another price change occurs.

2.2 Price Adjustment

(a) Upon written notice to Customer, pricing may be adjusted, up or down quarterly, as a result of fluctuations in [*]; provided, however, that any annual adjustment to labor rates are limited to a maximum increase of five percent (5. Supplier must provide documentation evidencing increases in such costs, and in the event of a disagreement as to a Product pricing adjustment, the parties will, in good faith, negotiate such adjustment. Additionally, the parties understand and agree that the prices reflected in Exhibit B and referenced above in Section 2.1 are based upon certain assumptions and information provided by Customer, including, but not limited to, information regarding the type, size and condition of tooling, testing and packaging requirements. To the extent that such information and assumptions are inaccurate, thereby affecting manufacturing costs, Supplier may adjust, accordingly, with written consent of the Customer, Product pricing, as reflected in Exhibit B. Consent will not be unreasonably withheld by Customer.

(b) Supplier has proposed a three-phase approach to duplicate, stabilize and effectively scale the Product manufacturing process. Supplier is committed to providing internal

engineering resources, at no cost to Customer, to support qualification and validation of Phases II and III, provided that certain minimum order quantities are met, as set forth in Exhibit B. After Phase I has been completed (described in Exhibit B), and the manufacturing line stabilized, Supplier will employ measures to reduce process variation and cycle time while increasing throughput. Phase II is intended to be fully scalable in nature, and the goal will be to support annual run rates in excess of [*] units per year. Phase III is a design and optimization approach that will incorporate process improvements while employing design changes to support the process improvements, including [*] prior to entering the final stages of Assembly. Phase III will be implemented once volumes reach greater than [*] annually. Timing and Engineering Charges around Phase II and III are spelled out in greater detail in Exhibit B. The parameters for all phases are subject to change and/or refinement after the validation of the process at Supplier's Costa Rica facility.

The parties acknowledge and agree that Customer has entered into this Agreement in reliance on Supplier's ability to reduce cycle times for the Products as estimated in Exhibit B. Accordingly, during the conduct of each of Phase I and Phase II as described on Exhibit B, Supplier will propose process improvements to Customer and estimated cycle time reductions associated with each such process improvement, to achieve the estimated cycle time reductions between phases as set forth on Exhibit B. Supplier will provide all information reasonably requested by Customer to evaluate each such proposed improvement, and shall implement each such process improvement only upon Customer's written approval thereof. If (i) after the commencement of Phase II, Supplier does not achieve a cycle time reduction corresponding to at least [*] of the cumulative estimated cycle time reductions for each process improvement approved by Customer during Phase I or (ii) after the commencement of Phase III, Supplier does not achieve a cycle time reduction corresponding to at least [*] of the cumulative estimated cycle time reductions for each process improvement approved by Customer during Phase II, then in each case (i) and (ii), provided that the failure to achieve the cycle time reductions is due solely to considerations within Supplier's control, Customer shall have the right to terminate this Agreement immediately upon written notice to Supplier.

2.3 Process Development Costs

Customer shall reimburse Supplier for [*] incurred by Supplier to conduct Phase I as described in Exhibit B, and for the [*] incurred by Supplier to conduct Phases I, II and III as described in Exhibit B. In each case, Supplier and Customer will mutually agree on the [*] and estimated costs required to support Phases I, II and III. Supplier shall invoice Customer on a monthly basis for all such costs incurred during the preceding month. With respect to Phase I [*], Customer shall pay each such invoice, unless subject to a bona fide dispute, within [*] after receipt thereof. For all other such costs, Customer shall pay each such invoice, unless subject to a bona fide dispute, within [*] days after receipt thereof.

2.4 Taxes

Any federal, state, county or municipal sales or use tax, excise or other tax (except for income taxes imposed upon Supplier), or other similar charge levied or assessed or charged on or for the sale, production or transportation of Products sold hereunder ("Taxes"), shall be paid by Customer. If Supplier is required to pay any such Taxes, Customer agrees to reimburse Supplier for any amounts so paid upon demand.

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2.5 Dollars

All amounts payable under or described in this Agreement are in U.S. dollars.

3.0 CAPITAL EQUIPMENT; DESIGNS/SPECIFICATIONS

3.1 Capital Equipment

(a) Supplier shall provide, at its sole expense, off the shelf capital equipment as Supplier deems reasonably necessary for the manufacture of Product at Supplier's facility (excluding any equipment to be provided or funded by Customer, under Section 3.1(b) below). All such capital equipment provided by Supplier shall remain the sole property of Supplier, and all processes and specifications that relate to such capital equipment, and that do not relate to Customer's Confidential Information, Products or materials provided by Customer, including any manufacturing process or specifications provided by Customer, shall constitute Supplier's proprietary Confidential Information, as defined in Section 7 herein, belonging exclusively to Supplier. Any and all copyrights, patents, trademarks, proprietary rights and/or trade secrets, registered or otherwise, arising or occurring, under federal, state, or other law and/or regulation, from or as a result of Supplier capital equipment or any Confidential Information belonging to Supplier, shall remain the sole property of Supplier.

(b) As part of and for the entire duration of this Agreement, Customer shall, at its sole expense, provide Supplier with all injection molds, tools, testing apparatus and other equipment, which are specific to the manufacture, design and/or specifications of the Products to be purchased by Customer hereunder (the "Customer Equipment"). Customer shall at all times retain exclusive ownership of the Customer Equipment, and all specifications that relate to the Customer Equipment shall constitute Customer's proprietary Confidential Information, as defined in Article 7 herein, belonging exclusively to Customer. Any and all copyrights, patents, trademarks, proprietary rights and/or trade secrets, registered or otherwise, arising or occurring, under federal, state, or other law and/or regulation, from or as a result of the Customer Equipment, or any Confidential Information belonging to Customer, shall remain the sole property of Customer.

(c) Supplier shall not use any Customer Equipment, except in connection with the manufacture of Products for Customer, without Customer's prior written consent.

(d) Customer shall be responsible for qualification oversight and final approval of the Phase 1 assembly line at Supplier's Costa Rica facility. Supplier shall be responsible for providing Engineering resources to develop and execute the qualification of the Phase I assembly line. Assuming successful completion of Phase I, Supplier will provide, at no cost to Customer, Engineering resources to qualify equipment associated with Phase II and Phase III of the project, provided that minimum annual quantity rates are being met.

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(e) Supplier shall maintain the Customer Equipment in good operating condition (normal wear and tear expected), and Supplier shall make such repairs and alterations as may be appropriate for such equipment's intended use and good working order. Supplier shall invoice customer for any repairs and/or alterations that are necessary and required in order to perform under the terms of this Agreement, unless resulting from Supplier's negligence or willful misconduct. Supplier shall provide routine, expected mold maintenance, including the replacement and repair of springs and normal periodic cleaning and lubrication. Notwithstanding Supplier's routine care responsibilities, Customer shall be solely responsible for all non-routine care, repair, maintenance, upgrades and refurbishments of all Customer Equipment (including maintaining a spare parts inventory, where appropriate, for the Customer Equipment), unless resulting from Supplier's negligence or willful misconduct; provided that Supplier shall keep Customer updated on the condition of the Customer Equipment and any need for repair and maintenance thereof.

4.0 WARRANTIES; LIMITATION OF LIABILITY

4.1 General Warranty

Each of Customer and Supplier represents and warrants to the other party that:

(i) such party has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated herein;

(ii) this Agreement and the provisions hereof constitute the valid and legally binding obligations of such party, and do not require the consent, approval or authorization of any person, public or governmental authority or other entity; and

(iii) the execution and delivery of this Agreement by such party, and the performance of such party's obligations hereunder, (a) are not in violation of, breach of, and will not conflict with or constitute a default under, the Articles of Incorporation or Bylaws of such party, or any material agreement, contract, commitment or obligation to which such party is a party or by which such party is bound; and (b) will not conflict with or violate any applicable law, rule, regulation, judgment, order or decree of any governmental agency or court having jurisdiction over such party or its assets or properties.

4.2 Product Warranties

Supplier warrants: (i) that all Products delivered hereunder shall conform to the Product Specifications, shall have been manufactured using materials that conformed to the applicable materials specifications, and shall be free from defects in workmanship at the time of shipment; (ii) that all Products shall be manufactured in accordance with current GMP and the

pertinent rules and regulations of the FDA, EU for Medical Devices; (iii) that no Product delivered hereunder shall at time of shipment be adulterated or misbranded within the meaning of the Act, or within the meaning of any applicable state or municipal law in which the definitions of adulteration and misbranding are substantially the same as those contained in the Act, provided such laws are constituted and effective at the time of such delivery; and (iv) that all Products delivered hereunder will be free and clear of all liens and encumbrances ((i)-(iv), collectively, the "Product Warranties"). The Product Warranties as to any Product supplied hereunder shall expire on the expiration of the Product's stated shelf-life. SUPPLIER'S SOLE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, FOR BREACH OF THESE PRODUCT WARRANTIES SHALL BE, AT SUPPLIER'S SOLE DISCRETION, CREDIT OR REPLACEMENT, AS SOON AS POSSIBLE, OF THE NONCONFORMING PRODUCT IN ACCORDANCE WITH SECTION 1.7.

4.3 Additional Supplier Warranties. Supplier represents, warrants and covenant to Customer that: (a) it is not, and it will not use to conduct any activities under this Agreement, any employee or consultant that has been, debarred by a regulatory authority or that, to its knowledge, is the subject of debarment proceedings by a regulatory authority and (b) it will not enter into any agreement or arrangement with any other entity that would prevent or in any way interfere with Supplier's ability to perform its obligations hereunder.

4.4 Warranty Disclaimer; Limitation of Liability

EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE AND/OR PARTICULAR PURPOSES. EXCEPT FOR DAMAGES AVAILABLE FOR BREACH OF ARTICLE 7, AND EXCEPT FOR INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 8, NEITHER PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES OR PROFITS OF CUSTOMER AND/OR ITS CUSTOMERS, AGENTS AND DISTRIBUTORS, OR OF SUPPLIER, RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY APPLIES BROADLY, AND TO ANY AND ALL PRODUCTS MANUFACTURED AND SUPPLIED HEREUNDER, AND SHALL NOT BE CONSTRUED TO APPLY ONLY TO DAMAGES OCCURRING AS A RESULT OF BREACH OF ANY PRODUCT WARRANTIES, BUT SHALL ALSO APPLY TO ANY DAMAGES OCCURRING AS A CONSEQUENCE OF THIS AGREEMENT OR ANY BREACH HEREOF. ALL LIMITATIONS OF LIABILITY, PURSUANT TO THE TERMS HEREIN, SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT. EXCEPT FOR DAMAGES ARISING FROM [*] OR DAMAGES AVAILABLE FOR [*], UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE LIABLE TO CUSTOMER FOR ANY CLAIM UNDER THIS AGREEMENT IN AN AMOUNT EXCEEDING THE GREATER OF [*] OR [*].

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5. TERM

The term of this Agreement shall be four (4) years from the Effective Date (the "Term"). At the end of the initial Term, this Agreement shall automatically renew for consecutive one (1) year periods, until and unless either party notifies the other, in writing, of its intent to not renew this Agreement. Such written notification of non-renewal must be given no less than [*] prior to the intended termination date.

6. TERMINATION

6.1 Either party may, at any time, in writing, terminate this Agreement by providing [*] advanced notice.

6.2. Either party may immediately terminate this Agreement by written notice upon the occurrence of any of the following events: (i) the other party is or becomes insolvent or unable to pay its debts as they become due within the meaning of the United States Bankruptcy Code (or any successor statute) or any analogous foreign statute; or (ii) the other party appoints or has appointed a receiver for all or substantially all of its assets, or makes an assignment for the benefit of its creditors; or (ii) the other party files a voluntary petition under the United States Bankruptcy Code (or any successor statute) or any analogous foreign statute; or (iii) the other party has filed against it an involuntary petition under the United States Bankruptcy Code (or any successor statute) or any analogous foreign statute, and such petition is not dismissed within ninety (90) days.

6.3 Either party may terminate this Agreement, in writing, in the event of a material breach by the other, provided, however, that the party asserting such breach must first serve written notice of the alleged breach on the offending party, and must allow the offending party [*], from the date of delivery of such notice, within which to cure the alleged breach, and if such breach is cured within such [*] period, then such party shall not have the right to terminate this Agreement. In addition, Customer may terminate this Agreement pursuant to Section 2.2(c).

6.4 Notwithstanding anything to the contrary, termination of this Agreement may only be effected in writing, and according to the terms of this Agreement or as otherwise agreed by the parties in writing. Termination of this Agreement, for whatever reason, shall not affect any rights or obligations that may have accrued to either party prior to the effective date of termination.

6.5 In the event that this Agreement is terminated or expires, or at any time upon Customer's request, including in connection with a supply interruption under Section 1.8(b) or 1.8(c), Supplier shall provide reasonable access to Customer to all processes, procedures, and data in Supplier's possession and which relate specifically to Customer's Product (but which specifically do not include any confidential, proprietary or trade secret information of Supplier) and are required to manufacture Products in accordance with the Product Specifications (as in effect at the time of such termination or expiration), the manufacturing process then in use by

Supplier and GMP and all applicable FDA guidelines, and shall provide reasonable access to Supplier's personnel to assist Customer, at Customer's expense, in transferring this information and establishing manufacturing capability at Customer's or its Affiliate's or designee's facility; provided that (a) Customer may only conduct such transfer to a third party designee upon the termination or expiration of this Agreement or in the event of a supply interruption under Section 1.8(b) or 1.8(c) and (b) Customer may conduct such transfer to Customer or its Affiliate at any time upon the termination or expiration of this Agreement or in the event of a supply interruption under Section 1 .8(b) or 1.8(c). Customer shall reimburse all internal costs (at an agreed rate) and third party costs incurred by Supplier to provide such access and assistance.

6.6 The obligations of Confidentiality, set forth in Article 7, the Warranties and Limitation of Liability provided for in Article 4, the Indemnification provisions set forth in Article 8 and the provision of Assignment set forth in Article 9 herein, and Sections 1.5(e), 1.10, 6.4, 6.5, 6.6, 10.5, 10.8 and 10.9 shall survive the expiration or termination of this Agreement.

7. CONFIDENTIALITY AND TECHNOLOGY

7.1 The parties acknowledge and agree that all information disclosed by one party (the "disclosing party") to the other party (the "receiving party") pursuant to this Agreement, whether in oral, written, graphic or electronic form, will be the "Confidential Information" of the disclosing party; provided that (a) all Customer Technology (as defined in Section 7.6) will be deemed Customer's Confidential Information and (b) all information disclosed by a party under the Mutual Confidentiality and Non-Disclosure Agreement between the parties dated [*] (the "NDA") that is related to the Products will be deemed such party's Confidential Information under this Agreement. Each party acknowledges and agrees that all the other party's Confidential Information is confidential and proprietary to the disclosing party. Each party shall not disclose to any third party the other party's Confidential Information without the other party's prior written consent, and shall not use the other party's Confidential Information for any purpose other than as permitted or required hereunder, including to exercise its rights or perform its obligations under this Agreement (which includes, with respect to Customer, the use and disclosure of Supplier's Confidential Information in connection with seeking, obtaining and maintaining regulatory approval of any Product in any regulatory jurisdiction). Each party may disclose the other party's Confidential Information only to those of its and its Affiliates' employees, agents and contractors who require access to such information for the purposes described above and who are under written obligations of confidentiality and non-use that are consistent with and no less protective to the other party than the terms of this Agreement. Customer may also disclose Supplier's Confidential Information to its bona fide potential and actual acquirors, investors, licensees and other business partners on a need-to-know basis under appropriate confidentiality obligations. Each party shall take the same reasonable measures necessary to prevent any disclosure by its employees, agents, contractors, sub-licensees, or consultants of the other party's Confidential Information as it applies to the protection of its own Confidential Information.

7.2 Exclusions. Information shall not be considered Confidential Information hereunder if it:

(a) was already in the possession of the receiving party prior to its receipt from the disclosing party, as shown by the receiving party's books and records;

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(b) is, or becomes, part of the public knowledge or literature through no fault, act or omission of the receiving party, provided, Confidential Information relating to the Product shall not be deemed to have entered the public domain by reason of its having been filed with any regulatory agency; or

(c) is, or becomes, available to the receiving party on a non-confidential basis from a source other than the disclosing party, which source has rightfully obtained the same information and has no obligation of confidentiality to the disclosing party with respect to it.

Notwithstanding the foregoing, the receiving party shall have the right to disclose the disclosing party's Confidential Information to the extent required to be revealed pursuant to law or court order, provided, however, the receiving party which is under any such requirement of law shall give reasonable notice to the disclosing party of such requirement and shall cooperate with the disclosing party in reasonable legal efforts to limit or mitigate any such revelation so as to preserve the proprietary nature of any Confidential Information contained therein.

7.3 Duration; Surviving Obligation. Each party's obligations of non-use and non-disclosure of the other party's Confidential Information shall apply during the term of this Agreement and shall also survive for a period of [*] after its expiration or termination for any reason. The terms of the NDA shall continue in full and effect only with respect to information disclosed thereunder that relates to products of Customer other than the Products and shall be enforceable in accordance with its terms. All information disclosed by the parties under the NDA related to the Products shall be deemed disclosed under this Agreement and not the NDA.

7.4 Terms of this Agreement. The parties acknowledge that the terms of this Agreement will be treated as Confidential Information of each party. Such terms may be disclosed by a party (a) to bona fide potential and actual investors, acquirors or other business partners on a need-to-know basis under appropriate confidentiality restrictions; and (b) to comply with any applicable governmental regulations and legal requirements, including filings required in connection with the public sale of securities, provided that the party notifies the other party prior to disclosure and uses reasonable efforts to seek confidential treatment of such information in connection with such filing. Neither party will make any announcement or other public statement concerning the existence or terms of this Agreement except with the consent of the other party, such consent not to be unreasonably withheld, and except to the extent public disclosure of the existence or terms of the Agreement is required by applicable laws and regulations.

7.5 Return of Confidential Information. Upon termination or expiration of this Agreement, or upon written request of the disclosing party, a receiving party will promptly return to the disclosing party or destroy all documents, notes and other tangible materials comprising or containing the disclosing party's Confidential Information and all copies thereof; provided, that each party may retain a single archival copy of the other party's Confidential Information for the sole purpose of facilitating compliance with the surviving provisions of this Agreement or as required by applicable laws or regulations.

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All data, information, reports and any and all related documentation that are developed or generated by Supplier (or by any subcontractor or agent of Supplier) in the course of conducting activities under this Agreement, and all inventions, discoveries, formulae, procedures and other intellectual property, and any improvements thereto, whether patentable or not, that result from the services performed hereunder by Supplier (or by any subcontractor or agent of Supplier) (collectively, "Customer Technology"), shall be and remain the sole and exclusive property of Customer (excluding, however, any pre-existing intellectual property and/or know-how and/or manufacturing processes that Supplier considers its confidential, proprietary or trade secret information). Supplier shall promptly disclose in writing to Customer any Customer Technology. Supplier shall assign and hereby assigns all of its right, title and interest in and to all Customer Technology (exclusive of Supplier's pre-existing technology) to Customer and shall assist Customer, at no cost to Supplier, in the procurement, assignment and protection of Customer's rights in such Customer Technology, including the prosecution and assignment of any intellectual property rights therein. Supplier shall be responsible for ensuring that it has the right to to assign all right, title and interest in and to the Customer Technology. Supplier shall not incorporate any proprietary technology of Supplier (or any third party) into any Product or manufacturing process without Customer's prior written consent. In the event that Supplier does incorporate any such proprietary technology, Supplier hereby grants Customer a worldwide, royalty-free, fully-paid, non-exclusive license, with the right to sublicense through multiple tiers, under such proprietary technology of Supplier, solely to make, have made, use, sell, have sold, offer for sale and import Products.

8. INDEMNIFICATION; INSURANCE

8.1 Supplier agrees to and shall indemnify, defend and hold harmless Customer, its Affiliates and their respective officers, directors, employees and agents from and against all liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) arising out of claims, suits or proceedings brought by a third party to the extent resulting from any negligent, malfeasant, willful or unlawful conduct by any Supplier Indemnitees or Supplier's breach of this Agreement.

8.2 Customer agrees to and shall indemnify, defend and hold harmless Supplier and its Affiliates and their respective officers, directors, employees and agents (collectively, "Supplier Indemnitees") from and against any and all liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees) arising out of claims, suits or proceedings brought by a third party to the extent resulting from (i) any actual or alleged defects in the design of any Product and/or the Product Specifications; (ii) any Customer breach of this Agreement; (iii) death of or bodily injury to any person, or property damage, on account of, or in relation to, any Product; (iv) any acts, negligent or otherwise, or willful malfeasance on the part of Customer or its employees and/or agents, in connection with Customer's design, sale, marketing or distribution of Product; and/or (v) any claims or allegations that the design, manufacture, use or sale of any Product manufactured by Supplier hereunder constitutes or

creates an infringement of any United States or non-United States patent, copyright, trademark or other proprietary right or trade secret, be it registered or otherwise, arising under federal, state or other law and/or regulation, except, in each case (i)-(v), to the extent resulting from any negligent, malfeasant, willful or unlawful conduct by any Supplier Indemnitees or Supplier's breach of this Agreement.

8.3 Whenever an indemnified party becomes aware of a claim, suit or proceeding as to which it believes it is entitled to indemnification under this Article, it shall give notice in writing to the indemnifying party, shall permit indemnifying party to assume exclusive control of the defense or settlement of the matter, and shall provide, at the expense of indemnifying party, all authority, information and assistance which indemnifying party may reasonably request for purposes of such defense. An indemnified party may engage its own counsel, at its own expense, to monitor the defense of any such matter. In no event shall the indemnifying party be entitled to settle any of the above-mentioned claims in a manner that admits liability of the indemnified party or otherwise subjects the indemnified party to any obligations without the indemnified party's consent, which shall not be unreasonably withheld, conditioned or delayed.

8.4 The obligations of indemnification and cooperation under this Article 8 shall survive the termination of this Agreement for any reason.

8.4 Supplier will, at its own expense, obtain and maintain throughout the term of this Agreement and for a period of time thereafter consistent with its obligation to indemnify Customer pursuant to Section 8.1, (a) product liability insurance providing protection in the amount of at least [*] in aggregate and at least [*] per occurrence and (b) general liability insurance providing protection in the amount of at least [*] per occurrence and in aggregate. Supplier will furnish to Customer a certificate of insurance upon request.

9. BINDING EFFECT/ASSIGNMENT

This Agreement and the performance of any obligations hereunder shall be binding upon, shall inure to the benefit of, and be enforceable by the parties hereto and any and all permitted assignees, successors and legal representatives of the parties hereto. Neither party may assign rights nor delegate duties, including to a subcontractor, under this Agreement without the prior written consent of the other party; provided that either party may assign this Agreement without the other party's consent to its Affiliate or its successor in connection with its merger, acquisition or sale of all or substantially all of its assets to which this Agreement relates. Any purported assignment in violation of the foregoing shall be null and void. Any assignee or delegate must agree in writing to be bound by the terms of this Agreement.

10. MISCELLANEOUS

10.1 Further Assurances. Each party hereto agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

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10.2 Force Majeure. Each of the parties hereto shall be excused from performance of its obligations hereunder to the extent such performance is prevented by a cause beyond the reasonable control of such party, including, without limitation, acts of God; laws or governmental regulations that become effective subsequent to the effective date of this Agreement war; insurrection; embargo; civil commotion; destruction of product facilities or materials by fire, earthquake or storm; labor disturbance; severe economic dislocation rendering the prices hereunder uneconomic or otherwise insufficient; judicial action; and failure of public utilities or common carriers. Such excuse from performance shall be effective only to the extent and duration of the event causing the prevention of performance and only if the affected party notifies the other party of such event within [*] after its occurrence and uses reasonable efforts to overcome such event.

10.3 Relationship. The parties are independent contractors and shall not be deemed to have formed any partnership, joint venture or other relationship. Neither party shall make, or represent to any other person that it has the power or authority to make, any financial or other commitment on behalf of the other party

10.4 Notice. All notices, requests or communications contemplated or required by this Agreement shall be in writing and, in order to be valid, shall be delivered by personal delivery or sent by certified or registered mail or equivalent, return receipt requested, by facsimile or telex, promptly confirmed by a writing sent by registered or certified mail, or by recognized overnight courier, addressed to the parties at the addresses set forth below, or such other addresses as may be designated, in writing, by the respective parties. Any notice shall be deemed given when received by the other party.

Address for Notices to Customer: AirXpanders, Inc. [*]	Address for Notices to Supplier: Vention Medical Costa Rica
With a copy to:	Vention Medical [*]

10.5 Legal Construction/Severability. If any part of this Agreement shall be held invalid or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect. The parties will in such event use their best efforts to replace the invalid or unenforceable provision(s) with valid and enforceable provision(s) which, insofar as practical, implement the purposes of this Agreement.

10.6 Section Headings/Construction/Days. The captions and headings appearing in this Agreement are for reference purposes only and shall not be considered part of this Agreement. Such captions and headings shall not modify, amend or affect the provision hereof. This Agreement has been jointly prepared and shall not be strictly construed against either party hereto. All references in this Agreement to days are to calendar days unless explicitly described as business days.

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10.7 Entire Agreement; Modifications; Consents; Waivers. This Agreement, together with the Exhibits attached hereto, contains the entire Agreement of and between Supplier and Customer, with respect to the subject matter hereof. This Agreement may not be modified or amended except by an instrument or instruments in writing, signed by both parties. Each party hereto may, by an instrument in writing, waive compliance by the other party with any term or provision of this Agreement on the part of such other party to be performed or complied with. The waiver by either party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.

10.8 Dispute Resolution. In the event that at any time there arises any disagreement, controversy or dispute between the parties hereto with respect to the enforcement, violation or interpretation of this Agreement, or of the operations hereunder or of the respective rights and liabilities of the parties hereto, then, upon written demand of any party hereto, said demand setting forth each matter or matters upon which the parties do not agree or upon which there is a controversy or dispute, such controversy or dispute shall be settled, in the first instance, by a meeting between the President of Supplier and the President of Customer, which meeting shall occur in a place mutually agreed upon by the parties within thirty (30) days after the written demand for resolution. In the event that said meeting is not successful in resolving any disputes between the parties, then such controversy shall be referred within thirty (30) days of said meeting to a mediator in accordance with the Commercial Arbitration Rules of the American Arbitration Association (such mediation to take place in a city mutually agreeable to the parties). If the parties are unable to resolve the disagreement, controversy or dispute at that mediation, or within seven (7) days following such a mediation, said disagreement, controversy or dispute shall be resolved by binding arbitration before three independent, neutral arbitrators, each having significant experience in medical device manufacturing, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Each party shall select one arbitrator and the two arbitrators will select the third arbitrator. The arbitrators shall set limits on discovery to insure that the arbitration will be concluded and the award rendered within no more than [*] from selection of the arbitrators. The arbitrators are authorized and empowered to grant equitable relief including but not limited to permanent injunctions and restraining orders prohibiting or limiting disclosure or use of Confidential Information. The arbitrators shall apply the substantive law of Delaware, except that the interpretation and enforcement of this arbitration provision shall be governed by the Federal Arbitration Act. ANY AWARD BY THE ARBITRATOR(S) SHALL BE SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 4.4 OF THIS AGREEMENT. Each party hereto agrees to consider itself bound and to be bound by any award made by the arbitrators pursuant to this Agreement. If the disagreement, controversy or dispute is completed through arbitration, the prevailing party shall be entitled to its reasonable costs and reasonable

attorneys' fees incurred in the mediation and arbitration. Nothing herein prevents either party from seeking a preliminary injunction or temporary restraining order or other equitable remedy if necessary to protect the interests of such party or to preserve the status quo prior to or pending the mediation or arbitration proceeding.

10.9 Governing Law. The provisions of this Agreement shall be construed and governed, in all respects, by the laws of the State of Delaware, excluding its conflicts of laws principles.

IN WITNESS HEREOF, the parties hereto have executed this Agreement as of the date first written above.

Vention Medical Costa Rica, SA.

By: _____
Title: _____
Printed Name: _____

Date: _____

AirXpanders, Inc.

By: _____
Title: _____
Printed Name: _____

Date: _____

Vention Medical Inc. (solely for purposes of Section 1.10)

By: _____
Title: _____
Printed Name: _____

Date: _____

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

Exhibit A

[*]

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

Exhibit B:

[*]

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, HAS BEEN OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Exhibit C:

[*]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

Exhibit D:

[*]