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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2022

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM TO**

Commission File Number 001-37725

ViewRay, Inc.

(Exact name of Registrant as specified in its Charter)

Delaware	**42-1777485**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
1099 18th Street Suite 3000 Denver, CO	**80202**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (440) 703-3210

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.01	**VRAY**	**The Nasdaq Global Market**

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

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

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

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

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

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

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

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

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

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant, based on the closing price of the shares of common stock on The NASDAQ Stock Market on June 30, 2022, was $463,514,537.

The number of shares of Registrant's Common Stock outstanding as of February 22, 2023 was 181,805,341.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive proxy statement to be delivered to stockholders in connection with the Annual Meeting of Shareholders to be held in 2023 are incorporated by reference in Part III of this Form 10-K where indicated.

VIEWRAY, INC.
FORM 10-K
ANNUAL REPORT

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this "Report"), contains forward-looking statements, including, without limitation, in the sections captioned “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and elsewhere. Any and all statements contained in this Report that are not statements of historical fact may be deemed forward-looking statements. Terms such as “will”, “may,” “might,” “would,” “should,” “could,” “project,” “estimate,” “pro forma,” “predict,” “potential,” “strategy,” “anticipate,” “attempt,” “develop,” “plan,” “help,” “believe,” “continue,” “intend,” “expect,” “future” and terms of similar import (including the negative of any of the foregoing) may be intended to identify forward-looking statements. However, not all forward-looking statements may contain one or more of these identifying terms. Forward-looking statements in this Report may include, without limitation, statements regarding (i) the plans and objectives of management for future operations, including plans or objectives relating to the development of products, (ii) a projection of income (including income/loss), earnings (including earnings/loss) per share, capital expenditures, dividends, capital structure or other financial items, (iii) our future financial performance, including any such statement contained in a discussion and analysis of financial condition by management or in the results of operations included pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”), and (iv) the assumptions underlying or relating to any statement described in points (i), (ii) or (iii) above.

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

- disruptions in the supply or changes in the costs of raw materials, labor, product components, or transportation services, including as a result of inflation;
- our reliance on third parties, including in supplying and distributing MRIdian®;
- delays in business operations and installation caused by factors related to the coronavirus pandemic ("COVID-19");
- our ability to procure materials and components in connection with the manufacture and installation of MRIdian;
- market acceptance of magnetic resonance imaging (“MRI”) guided radiation therapy;
- the benefits of MR Image-Guided radiation therapy;
- our ability to obtain and maintain regulatory approval in targeted markets for MRIdian;
- our ability to successfully sell and market MRIdian in our existing and expanded geographies;
- the performance of MRIdian in clinical settings;
- competition from existing technologies or products or new technologies and products that may emerge;
- the effect or impact of market consolidation;
- the pricing and reimbursement of MR Image-Guided radiation therapy;
- our ability to implement our business model and strategic plans for our business and MRIdian;
- the scope of protection we are able to establish and maintain for intellectual property rights covering MRIdian;
- the impact of the long sales cycle and low unit volume sales of MRIdian on estimates of our future revenue, expenses, capital requirements and our need for additional financing;
- our financial performance;
- the MRIdian linear accelerator technology, or MRIdian Linac, does not meet customer expectations;
- developments relating to our competitors and the healthcare industry; and
- other risks and uncertainties, including those listed under the section titled “Risk Factors.”

Any forward-looking statements in this Report reflect our current views with respect to future events or to our future financial performance and involve risks, uncertainties and other factors that may cause actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by these forward-looking statements. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under Part I, Item 1A, titled “Risk Factors” and discussed elsewhere in this Report. Given these uncertainties, you are cautioned not to place undue reliance on these forward-looking statements. We disclaim any obligation to update the forward-looking statements contained in this Report to reflect any new information or future events or circumstances or otherwise, except as required by law.

This Report also contains estimates, projections and other information concerning our industry, our business, and the markets for certain devices, including data regarding the estimated size of those markets. Information that is based on

estimates, forecasts, projections, market research or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances reflected in this information. Unless otherwise expressly stated, we obtained this industry, business, market and other data from reports, research surveys, studies and similar data prepared by market research firms and other third parties, industry, medical and general publications, government data and similar sources.

PART I

Item 1. BUSINESS

In this report, “ViewRay”, the “Company”, “we”, “us” and “our” refer to ViewRay, Inc. and its wholly-owned subsidiary, ViewRay Technologies, Inc.

Company Overview

ViewRay, Inc. designs, manufactures, and markets the MRIdian MRI-guided Radiation Therapy System. MRIdian is built upon a proprietary high-definition magnetic resonance (“MR”) imaging system designed from the ground up to address the unique challenges and clinical workflow for advanced radiation oncology. Unlike MR systems used in diagnostic radiology, MRIdian's high-definition MR was purpose-built to address specific challenges, including beam distortion, skin toxicity, and other concerns that may arise when high magnetic fields interact with radiation beams. The MRIdian MRI-guided Radiation Therapy System integrates diagnostic-quality MR imaging with radiation therapy delivery to enable on-table adaptive treatments with real-time tissue tracking and automatic beam gating. MRIdian supports the delivery of ablative radiation doses in five or fewer fractions, without implantable markers resulting in lower toxicities in hard-to-treat cancers. There are two generations of the MRIdian: the first generation MRIdian with radiation delivery using Cobalt-60 and the second generation MRIdian Linac, with a more advanced linear accelerator or ‘linac’ to deliver the radiation beams. MRIdian with Cobalt-60 is no longer commercially available.

MRIdian was designed to address the key limitations of existing external-beam radiation therapy technologies. MRIdian employs MRI-based technology to provide real-time imaging that clearly defines the targeted tumor from the surrounding soft tissue and other critical organs, both before and during radiation treatment delivery. We believe this combination of enhanced anatomical visualization and accurate dose calculation and delivery will improve the safety and efficacy of radiation therapy, leading to better outcomes for patients suffering from cancer.

Both generations of the MRIdian have received 510(k) marketing clearance from the U.S. Food and Drug Administration, (“FDA”) and permission to affix the Conformité Européene (“CE”) mark.

- We received initial 510(k) marketing clearance from the FDA for our treatment planning and delivery software in January 2011.
- We received 510(k) marketing clearance for MRIdian, with Cobalt-60, in May 2012.
- In September 2016, we received the CE mark for the MRIdian Linac in the European Economic Area ("EEA").
- In February 2017, we received 510(k) marketing clearance from the FDA to market MRIdian Linac in the United States (“U.S.”). We have also received regulatory approval for MRIdian Linac in several other markets, including Taiwan, Canada, Israel, and Japan.
- In June 2017, we received 510(k) marketing clearance to market RayZR™, our high-resolution beam-shaping multi-leaf collimator, or MLC.
- In February 2019, we received 510(k) marketing clearance for advancements in MRI, 8 frames per second cine, Functional imaging (T1/T2/DWI) and High-Speed MLC. In December 2019, we received the CE mark for these advancements in the EEA.
- In December 2021, the newest version of MRIdian Linac, MRIdian A3i, received 510(k) marketing clearance from the FDA.
- In September 2022, the Company received approval to market the MRIdian Linac in China from the National Medical Products Administration (“NMPA”).
- We are also seeking required regulatory approvals for MRIdian Linac in other countries, including the CE mark for MRIdian A3i in the EEA.

Over 29,000 patients have been treated with MRIdian. As of December 31, 2022, 56 MRIdian systems are installed at hospitals around the world where they are used to treat a wide variety of solid tumors and are the focus of numerous ongoing research efforts. MRIdian has been the subject of hundreds of peer-reviewed publications, scientific meeting abstracts, and presentations.

We currently market MRIdian through a direct sales force in the United States. In the rest of the world, we market MRIdian through a hybrid model of both a direct sales force and distribution network. We market MRIdian to a broad range of worldwide customers, including university research and teaching hospitals, community hospitals, private practices, government institutions and freestanding cancer centers. As with the conventional linac market, our sales and revenue cycles vary based on the particular customer and can be lengthy, sometimes lasting up to 18 to 24 months (or more) from initial customer contact to order contract execution. Following execution of an order contract, it generally takes nine to 15 months upon project commencement for a customer to customize an existing facility or construct a new vault. Upon the

commencement of installation at a customer's facility, it typically takes approximately 45 to 60 days for us to install MRIdian and perform on-site testing of the system, including the completion of acceptance test procedures.

As of December 31, 2022, we had installed or delivered 72 MRIdian systems worldwide and had a backlog with total value of $380.2 million. We generated revenue of $102.2 million, $70.1 million, and $57.0 million for the years ended December 31, 2022, 2021, and 2020, respectively. We had net losses of $107.3 million, $110.0 million and $107.9 million for the years ended December 31, 2022, 2021, and 2020, respectively.

We expect to continue to incur significant expenses and operating losses for the foreseeable future, as we:

- navigate our business activities through the impacts of the COVID-19 pandemic;
- manage delays experienced by our third-party suppliers and distributors;
- continue our research and development efforts;
- seek regulatory approval for MRIdian in certain foreign countries; and
- operate as a public company.

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

Impact of the COVID-19 Pandemic

The COVID-19 pandemic and its follow-on effects have impacted and will continue to impact business activity across industries worldwide, including ViewRay.

Due to pandemic-related factors including delays in service from our global supply chain partners and travel and quarantine restrictions imposed by government agencies and our customers in response to the spread of COVID-19, we have experienced delays in installation of systems in the United States, Asia and Europe. Similarly, our ability to conduct commercial efforts with our customers has been disrupted due to the impact of COVID-19 on our customers. If the economic effects of the COVID-19 pandemic persist or travel restrictions are reinstated, our ability to conduct our business and access capital markets will be negatively impacted. Capital equipment sales, which make up the majority of our revenue, and which were negatively impacted by the pandemic, may take longer than other areas of the economy to return to pre-pandemic levels, and this may continue to have a material impact on our business. The impacts of the COVID-19 pandemic have slowed, but they persist globally and may negatively impact our operations in areas that we are not aware of currently.

Impact of Inflation

In recent years, inflation has not had a significant impact on our operations. However, as inflation has increased over the past year, we are monitoring the actual and potential impacts on our business, including increases in product cost in connection with the parts used in our manufacturing process, freight and transportation costs, and wage pressure. Should the increase in inflation persist, it will likely increase the costs of conducting our operations, which would adversely impact our profitability.

Cancer and Radiation Therapy Market

Incidence of Cancer

Cancer is a leading cause of death globally and the second leading cause of death in the United States behind cardiovascular disease. According to the American Cancer Society, over 1.9 million people are expected to be newly diagnosed with cancer in the United States during 2022 and more than 600,000 are expected to die from cancer, which translates to over 1,600 deaths per day. As a result of a growing and aging population, the International Agency for Research on Cancer ("IARC"), part of the World Health Organization, reported that the worldwide cancer burden rose to 19.3 million new cases and 10.0 million cancer deaths estimated in 2020.

Cancer Therapy

The primary goal of cancer therapy is to kill cancerous tissues, while minimizing damage to healthy tissues. There are three main ways to treat cancer: surgery, chemotherapy and radiation therapy. Surgery attempts to remove the tumor from the body, while minimizing trauma to healthy tissue and preventing the spread or translocation of the disease to other parts of the body. Surgery is particularly effective because the surgeon can see the tumor and surrounding healthy tissue directly throughout the course of the procedure and can adapt his or her planned removal approach mid-procedure accordingly. Chemotherapy uses drugs to kill cancer cells. Unlike surgery, most forms of chemotherapy circulate throughout the patient's body to reach cancer cells almost anywhere in the body systemically. Chemotherapy is most effective at destroying microscopic levels of disease. Radiation therapy is typically used as a local treatment, directed at a tumor and

surrounding areas where microscopic cancerous cells are assumed to have spread. Radiation may be used as the primary treatment modality, or in combination with either chemotherapy or surgery or both. Radiation therapy works by damaging genetic material in cells and other cell components through interaction with ionizing energy. Effective radiation therapy balances destroying cancer cells with minimizing damage to normal cells. It can be used at high doses to ablate a tumor, an effect similar to surgery, or at moderate doses to target local microscopic disease, as is done with chemotherapy. Other, more recently developed ways of treating cancer include hormone therapy and targeted therapy, such as immunotherapy.

Radiation Therapy

Radiation therapy has become widespread, with nearly two-thirds of all treated cancer patients in the U.S. receiving some form of radiation therapy during the course of their cancer treatments, according to estimates by American Society for Radiation Oncology (“ASTRO”). For most cancer types treated with radiation therapy, at least 75% of the patients are treated with the intent to cure the cancer. For lung and brain cancers, that number is somewhat lower, with 59% of lung cancer patients and 50% of brain cancer patients being treated with the goal of curing cancer. The remainder of cases are treated with palliative intent to relieve pain or other tumor related symptoms. The type of radiation therapy delivered by linac or Cobalt 60 based devices is a non-invasive outpatient procedure with little or no recovery time and can be used on patients who are unable to undergo conventional surgery.

Radiation is used to kill cancer cells primarily by damaging their DNA but can also kill healthy cells in the same way or cause them to become cancerous themselves. As a result, the goal of curative radiation therapy is to balance delivery of a sufficiently high dose of radiation to a tumor to kill the cancer cells while, at the same time, minimizing damage to healthy cells, particularly those in critical organs. Normal cells are better able to repair themselves after radiation than tumor cells, so doses of radiation are often fractionated, or delivered in separate sessions with rest periods in between. As a result, standard radiation therapy is often given once a day, five times a week, for one to nine weeks. According to a 2021 IMV report, patients made an estimated 17.9 million radiation therapy treatment visits in the U.S. in 2021.

Radiation Therapy Equipment Market

According to the Global Industry Analysts Inc. ("GIA") Radiation Therapy Equipment - Global Market Trajectory & Analytics report published in 2022, the global radiotherapy market is estimated to grow to approximately $7.3 billion by 2026. According to IAEA Directory of Radiotherapy Centres ("DIRAC"), there are over 15,000 linacs installed in over 7,800 centers worldwide. In North America, there are nearly 5,000 linacs installed at nearly 2,300 centers. The annual market for linacs is estimated to be 1,200 units per year globally, the majority of which are replacements for older machines.

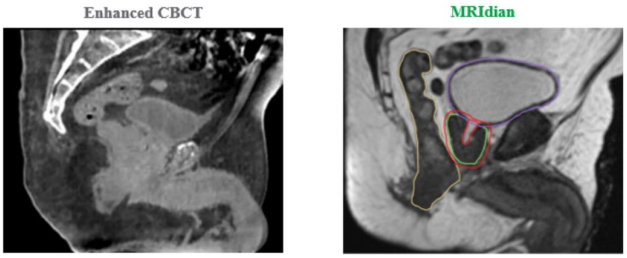
Limitations of Conventional Radiation Therapy

Limitations with conventional radiation therapy result from imaging technologies that make accurate visualization of a tumor and its relation to critical organs difficult or impossible during the treatment delivery. Most current conventional systems take images of the tumor before and after treatments, but, not continuously during the treatments in real time. As a result, treatments may not be delivered with the precision assumed by the physician and may not result in the necessary efficacy or reduction in local tumor recurrence. Also, healthy tissues may be exposed to radiation levels different from those predicted by the planning system and can result in patient injury.

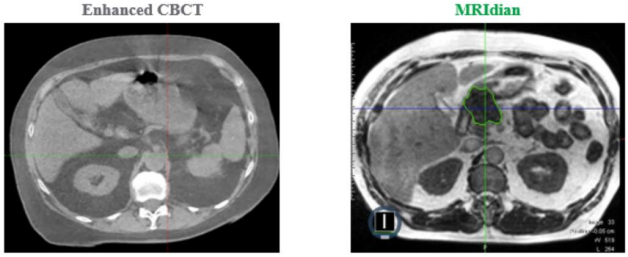
- ***Inability to accurately visualize a tumor for treatment alignment.*** To locate a tumor, conventional radiation therapy systems typically rely on CT scans taken while the patient is on the delivery unit treatment table, or “on-table.” Because it is difficult to differentiate between the tumor and nearby soft tissues with CT images, clinicians use surrogate registration markers, including existing bone structures, external marks and surgically implanted fiducials, to align a patient’s tumor to the treatment beams prior to commencing treatment.

Comparison of On-Table CT Images to On-Table MRIdian Images

Prostate cancer



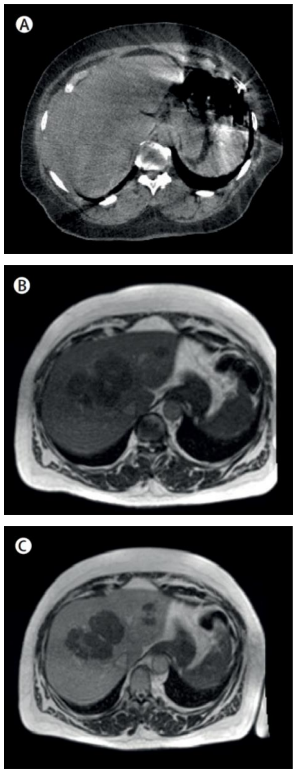
Abdominal Cancer



Cone beam CT breath hold

MRIdian no contrast

MRIdian with contrast



However, the spatial relationship between tumors and the registration markers used to locate them often changes between the time of the patient's initial imaging and the time of his or her first treatment session. This is particularly true for tumors which are located in soft tissue. By relying on a marker as a proxy for the tumor location, rather than on the tumor itself, clinicians risk missing the tumor when they deliver radiation beams into the patient's body. In addition, placement of surgically implanted fiducial markers comes with inherent risks: the procedures are invasive; there is a risk of pain,

infection and bleeding; and fiducials may change location and even migrate inside the body. Fiducial marker placement also may add extra costs for payers, providers and patients. Despite placement of fiducials, physicians are often unable to track changes in tumor shape. Also, fiducials made of dense metals, such as gold, may cause artifacts which interfere with imaging.

- ***Inability to adapt treatment on-table.*** A physician designs a treatment plan and dose prescription based on images that are captured days or even weeks prior to initiation of radiation therapy. Creating a treatment plan can take up to several weeks in complex cases, and a course of treatment itself can take up to nine weeks. However, during the course of therapy, tumors often change size, orientation or shape, and patient anatomy can change for a variety of reasons such as weight loss or gain. These changes can alter the planned radiation exposure to both the targeted regions and nearby healthy organs; this has the potential to increase the risk of local tumor recurrence and to reduce the safety of the radiation delivery. Adjusting for these changes on conventional delivery units requires re-planning, which includes getting new patient images needed to create a new treatment plan. This process may take several days and is resource intensive. As a result of these limitations, re-planning is infrequently performed.

  Due to limitations in imaging technologies, physicians may be unaware of changes in the tumor and surrounding anatomy. Consequently, they may continue to administer radiation dose according to the original treatment plan, without realizing its potential to reduce the effectiveness of the tumor treatment and to increase the risk of patient injury.
- ***Inability to track tumor and organ motion accurately.*** In addition to the difficulty of locating a tumor accurately in a patient's body at the time treatment begins, a further challenge is accounting for ongoing tumor movement that takes place during treatment. Tumors have been shown to move multiple centimeters relative to surrogate registration markers over the course of only a few seconds. Breathing and other normal bodily functions, such as changes in the bladder or bowel during treatment, can cause significant tumor motion. Although physicians use internal markers, external cameras and blocks placed on the patients' body to track respiratory and other motion, they are typically unable to track the tumor itself. As a result, physicians usually enlarge the total region to be irradiated. This increase in the irradiated region exposes additional healthy tissues to radiation and limits the dose that is delivered to the tumor.

Each of these limitations increases the risk of missing a tumor and hitting healthy tissue during treatment. If a tumor is insufficiently irradiated, it may not respond to treatment, resulting in a greater probability of local tumor recurrence and reduced overall survival for the patient. The ability to avoid irradiating healthy tissue has been shown to reduce side effects. If healthy tissues, particularly critical organs, are irradiated, the side effects can be severe, including: scarring of lung tissue; fibrosis and cardiotoxicity in lung and breast cancers; incontinence and sexual dysfunction in pelvic and prostate cancers; infertility in pediatric cancers; memory loss, seizures and necrosis in brain cancer; secondary cancers, and in serious cases, death. Many of these side effects can be costly for patients and the healthcare system.

Although MRI technology is an imaging tool broadly used to differentiate between types of soft tissue in diagnostic settings, MRI technology had not been available in radiation treatment before the launch of ViewRay's MRIdian System. MRI had not been used within the radiation therapy suite because the technologies interfered with each other: the magnetic field generated by MRI interfered with the linac beam, while the radiofrequencies produced by the linac distorted the MRI images. Current forms of CT based radiation therapy have improved over time, but issues with additional radiation dose and image quality have limited the utility of these technologies. Fluoroscopy and cone-beam CT, which is a form of on-board CT, involve the use of X-rays, a form of ionizing radiation, and pose an increased risk of radiation-induced cancer to the patient.

Our Solution

We developed MRIdian to address the key limitations of existing external-beam radiation therapy technologies. MRIdian is the world's first device to integrate a diagnostic-quality MRI with an advanced linear accelerator. MRIdian is the first and only low-field MRI-guided, on-table adaptive radiotherapy system with real-time, tissue tracking-based automated beam gating with an advanced linear accelerator. MRIdian offers:

- MRI-guided imaging that provides advanced tissue visualization compared to cone-beam computed tomography ("CBCT"), to enable precise contouring and reduced margins.
- Fully integrated, on-table adaptive workflow that allows complete re-optimization of the daily treatment plan.
- Real-time tissue tracking that controls the automated beam gating without the need for implanted markers.

MRIdian A3i is the Company's next version of MRIdian. MRIdian A3i streamlines the on-table adaptive workflow by allowing clinicians to intelligently auto-contour, auto-adapt, and auto-gate. The parallel collaborative workflow within MRIdian A3i, allows clinicians to collaborate simultaneously and connect remotely during patient treatment. The automated workflow steps and contouring tools are designed to minimize clinician time and increase patient throughput.

MRIdian A3i expands existing real-time tissue tracking and automated beam gating functionalities to include multiplanar tracking and gating in up to three planes. Our customers have the flexibility to select up to three different tracking targets in any combination of coronal, sagittal, or axial planes to automatically stop the beam when any single target exceeds the clinician-defined treatment boundaries.

MRIdian A3i, with BrainTx™, the brain treatment package consists of a dedicated brain coil with an integrated stereotactic brain immobilization system. New, high-resolution volumetric and real-time imaging features are designed to enable customers to treat brain metastases, resection cavities, gliomas, and other cranial lesions. MRIdian A3i with BrainTx is in the process of being CE marked. We currently market the MRIdian A3i with BrainTx is currently only marketed in the US.

MRIdian represents a new paradigm in the treatment of cancer, providing clinicians with the ability to improve targeting precision and thus deliver higher —and potentially more effective—radiation doses.

This approach to radiation therapy is called MRIdian SMART (Stereotactic MRI-guided, adaptive radiotherapy). The benefits of MRIdian SMART include:

- safe delivery of ablative doses;
- tight margins;
- ability to treat patients, often with five or fewer fractions;
- elimination of the need for invasive fiducials; and
- demonstrated clinical outcomes with no to low grade three toxicities.

In order for clinicians to deliver high precision adaptive radiotherapy, the MRIdian Linac was designed with a purpose-built magnet, high precision double stacked double focused MLC, a high dose rate linear accelerator, and a Treatment Planning and Delivery System (TPDS) software suite built from the ground up. We believe that MRIdian provides the following clinical and commercial benefits to physicians, hospitals and patients:

- The ability to SEE: SmartVISION®
  Unlike MRI systems used for diagnostic radiology, MRIdian's SmartVISION MR imaging was purpose-built for radiation oncology and MRIdian’s SmartVISION was designed specifically to not interfere with high-fidelity beam delivery. Most importantly, SmartVISION provides diagnostic-quality, multi-sequence MR imaging while coexisting in close proximity with the integrated linear accelerator. MRIdian’s proprietary magnetic and radiofrequency shielding design ensures minimal interaction between the linear accelerator and magnetic field. SmartVISION virtually eliminates the risk of skin toxicities and trapped or distorted doses. With a proprietary split-magnet design exclusive to SmartVISION, MRIdian provides an unobstructed radiation beam path and optimal source-axis distance (“SAD”) enabling sophisticated beam dosimetry, exceptionally sharp penumbra tailored for stereotactic radiosurgery ("SRS") and stereotactic body radiotherapy ("SBRT"), and high-dose rate beam delivery.
- The ability to SHAPE: SmartADAPT®™

  Patient anatomy changes from day to day resulting in significant changes to the position, shape, and size of the tumor and surrounding healthy tissue between treatment sessions. Using MRIdian's SmartADAPT adaptive radiotherapy software, clinicians can now acquire daily on-table MR setup scans in seconds and leverage high-contrast, high-definition imaging to rapidly reshape dose delivery to accommodate the anatomical changes that occur throughout the course of treatment. Taking advantage of groundbreaking advances in computing technology, SmartADAPT calculates a new individualized Monte Carlo simulation to predict the probability of a variety of outcomes and plans in seconds based on the anatomy at that time—all while the patient is in the treatment position.
- The ability to STRIKE: SmartTARGET®™

  While the patient is on the table during beam delivery, transient gas bubbles, filling bladders and respiratory motion may cause tumors and surrounding organs at risk (OARs) to rapidly change position and shape. MRIdian’s SmartTARGET continuously acquires MR images and tracks target tissue and OARs faster than human reaction time. SmartTARGET’s real-time tissue tracking controls the automated beam gating by delivering the radiation dose only when the tumor is located in the pre-defined treatment boundary. If the tumor moves outside the pre-defined treatment boundary and OARs move into the treatment boundary, the beam automatically stops. When the tumor moves back into the boundary, the beam is turned on and the treatment resumes. SmartTARGET provides confidence that prescribed doses reach the target while avoiding critical structures.
- The ability to SIZE: SmartSITE™

  MRIdian's compact SmartSITE footprint addresses common physical space limitations and challenges associated with large-scale vaults and the need for a custom-built solution. MRIdian’s SmartSITE design allows MRIdian to fit within almost any existing standard linear-accelerator vault and shielding configuration, helping reduce prolonged installation schedules and additional costs necessary to build custom, large-scale vaults. MRIdian components are also able to fit through conventional vault doorways, so there is no need to remove walls, raise ceilings, or dig trenches, minimizing interruptions and delays.

MRIdian can treat a broad spectrum of radiation therapy indications and disease sites with its ability to perform three-dimensional conformal radiation therapy, or 3D-conformal radiation therapy (“CRT”), IMRT, IGRT, SBRT/SABR and SRS. MRIdian treatments are supported by existing radiation therapy payment codes in almost all countries in which we offer MRIdian. We believe MRIdian’s increased tumor target accuracy will allow physicians to treat patients with higher

radiation doses over fewer treatment fractions; this potentially enables the clinic to treat more patients with greater overall efficiency and patient throughput.

Our Strategy

We are dedicated to making MR Image-Guided radiation delivery the standard of care for radiation therapy. To achieve our objective of providing clinicians new and innovative ways to deliver radiation therapy, we are focused on delivering on an integrated plan that incorporates a bold commercial strategy, a relentless focus on operational excellence, the pursuit of the highest customer satisfaction and therapy adoption by focusing on the clinical, strategic, and economic value of MRIdian.

MRIdian's value propositions set us apart in the market and resonate with our customers by enabling them, in a financially responsible manner, to:

- treat patients with excellent care;
- attract new patients into their health system; and
- retain patients already in-network.

Clinical Value - MRIdian opens new treatment possibilities for patients by:

- allowing margins to shrink and spare healthy tissue;
- reoptimizing to escalate dose; and
- reducing fractionation schemes with confidence, thus accelerating ablative therapy with improved outcomes.

Strategic Value - MRIdian differentiates cancer programs by:

- expanding hypofractionation and SBRT radiation therapy service lines to patients that otherwise may not have been able to be treated with conventional linacs;
- allowing programs to garner patients from outside traditional referral networks and catchment areas; and
- optimizing vault efficiencies. As the cornerstone to the SBRT program, MRIdian allows our customers to free up time on existing linacs as patients shift to hypofractionated treatment plans.

Economic Value - By expanding our customers SBRT service line and optimizing vault efficiencies, MRIdian helps to deliver positive financial results by:

- capturing patients that otherwise may not have been treated;
- expanding the referral base and geographic catchment area; and
- optimizing vaults and tapping into the potential for incremental adaptive reimbursement.

We are also committed to attracting, retaining and developing the best talent across all functions. We believe this will allow us to expand the market and target more customers, accelerate our sales cycle, and significantly improve the customer’s overall experience.

- ***Investment in the commercial organization.*** We continue to fortify our United States sales force, while enhancing the international direct sales force to assist distributors in EMEA and Asia. We also have maintained our efforts to develop a focused commercial presence that is highly competitive, resulting in the continued adoption of MRIdian through pipeline development activities in targeted markets worldwide.
- ***Operational excellence.*** In tandem with our focus on building our customer pipeline, we are also committed to achieving internal operational excellence in parallel. We continually seek to create efficiencies across the organization to reduce the purchase order to revenue recognition cycle time. Achievement of this goal is to be driven by proactive engagement with customers to achieve vault readiness; driving supplier quality enhancements; and developing more robust and efficient manufacturing capabilities.
- ***Customer service.*** Key to our value system is pursuing the highest customer satisfaction. We measure this by continuously quantifying customer satisfaction and loyalty, and adjusting our priorities accordingly. By hearing the voices of the radiation oncologists, the medical physicists and radiation oncology dosimetrists, therapists and administrators, we continue to work to improve and refine the capabilities and resulting benefits of MRIdian. Current priorities are focused on addressing service and technical support, clinical workflow enhancements, reducing treatment times, the development of clinical data and maintaining our technology lead in MR Image-Guided radiation therapy through continued innovation.
- ***Customer program success.*** The success of our customers is paramount. We built our Customer Success Team to help customers succeed with their MRIdian programs. This critical and strategic team for ViewRay explores, understands, co-defines and executes on our customer’s vision to increase utilization of the MRIdian system and help enable the success of their MRI Linac program. We are not only committed to providing industry-leading technology, we also focus on optimizing our customers' investment. Rapid Adapt® is a comprehensive customer care program designed to move customers from contract execution into adaptive treatments as efficiently as possible, giving our customers the ability to:
    - Deliver personalized care to each patient;

- Expand our customers' patient population by allowing them to treat additional cancer types; and
- Drive utilization, patient throughput, and return on investment (“ROI”).

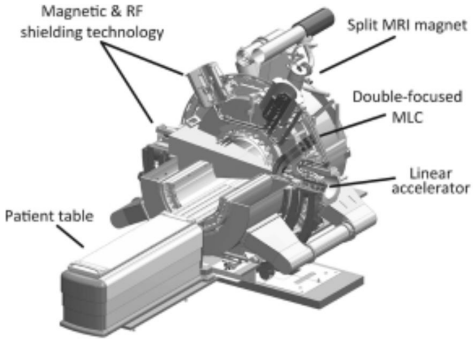
- ***MRIdian therapy adoption.*** We believe that MRIdian adoption will accelerate as we leverage three key drivers: innovation, clinical data and training.
  - ***Innovation.*** Innovation is one of our greatest strengths as an organization. We continue to invest in our technology to maintain our leadership position in the emerging MR Image-Guided radiation therapy market. The newest version of MRIdian, MRIdian A3i, includes features such as enhanced on-table adaptive workflow efficiency, new MRI imaging sequences, automated workflow steps, on-table auto-contouring tools, multi-planar tissue tracking, automated beam gating on multiple planes simultaneously, BrainTx, a new brain treatment package, and the integration of a real-time patient feedback display. The Company received FDA 510(k) clearance for MRIdian A3i and BrainTx in December 2021. The Company is able to market A3i in the EEA and is working to obtain CE Mark for the BrainTx package. As we advance our strong intellectual property portfolio, our innovation pipeline includes projects to address treatment delivery speed, machine vision and biological imaging. We continue to work with key opinion leaders, clinicians, hospitals and free-standing centers to refine and improve MRIdian’s features, optimize clinical workflow and increase patient throughput while incorporating our advanced features.
  - ***Clinical data***. MRIdian customers are developing an impressive compendium of clinical data. Over the last seven years, more than 65 different types of cancer have been treated on MRIdian systems. MRIdian users have generated hundreds of peer reviewed articles and abstracts highlighting thousands of patients with clinically reported outcomes. There are over 70 investigator lead clinical trials ongoing on MRIdian. Radiation oncologists and medical physicists have expanded treatment to areas such as abdominal oligometastatic cancer, tumors in the central lung, and non-invasive heart ablations.
  - ***Training.*** Training remains paramount to adoption. We invest in peer-to-peer symposia and training courses to facilitate sharing of best practices of key opinion leaders with new customers. We also plan to invest in our clinical field team. In order to drive awareness and adoption, we will continue to work with current customers and their respective institutions to host visiting physicians, train new users in best-practices, and engage in outreach events worldwide. In 2022, we invested in educating patient advocacy groups focused on prostate, pancreas, and lung cancers in order to help bring greater awareness of MRIdian's benefits to patients and clinicians alike.

The MRIdian System

The MRIdian is comprised of three major components, (i) the MRI system, (ii) the radiation delivery system, and an (iii) integrated treatment planning and delivery software.

Photo of an Installed MRIdian (University of Heidelberg)

MRIdian System Components



MRIdian MRI System

The heart of the MRIdian is the MRI system which captures soft tissue images of the patient’s body. To address the technical complications that arise from combining an MRI with an external-beam radiation delivery unit, we have designed a proprietary split superconducting magnet that allows radiation doses to be delivered through a central gap, which places the MRI components away from the path of the beam. Our MRI system captures and displays live, high-quality images in one plane, eight or four times per second or in three planes, two times per second. These real-time images automatically track selected structures and control radiation treatment beam delivery. Features in MRIdian A3i include multi-planar tissue tracking, automated beam gating on multiple planes simultaneously, BrainTx, a new brain treatment package, and the integration of a real-time patient feedback display. The Company received FDA 510(k) clearance for MRIdian A3i and

BrainTx in December 2021. The Company is able to market A3i in the EEA and is working to obtain CE Mark for the BrainTx package.

We have engineered our MRI system to be able to produce clear images using a low-field strength 0.35 Tesla magnet, which helps enable us to minimize image and radiation dose distortions.

MRIdian Radiation Delivery System

In the first-generation MRIdian, which we no longer make available for sale, radiation was delivered from three Cobalt-60 radiation therapy heads symmetrically mounted on a rotating ring gantry.

In the second generation MRIdian, our currently available system, we developed solutions to two long-standing problems that had prevented compact integration of a linac beam with an MRI system: 1) linac radiofrequency interference with the operation of the MRI; and 2) MRI magnetic interference with the operation of the linac. First, linacs utilize high-powered microwave generators similar to equipment used in radar at airports. These “radar stations” inside the linac create radiofrequency emissions, or “noise” that can corrupt the delicate signals measured from the patient’s body to generate MR images. We addressed this problem by introducing technology similar to that used in stealth aircraft. Airplanes built with stealth technology can hide from radar by using a coating that absorbs microwaves, thus preventing radar beams that strike the aircraft from bouncing back to the radar station. In a similar manner, we absorb the output of the linac “radar station” to hide it from the MRI, producing images as noise-free as those created without an integrated linac.

Second, MRIs utilize high-powered superconducting magnets required to image the patient’s tissues that must be placed close to the linac components used for radiation therapy. But many linac components will not operate properly when placed close to or inside these strong magnetic fields. We overcame this challenge by creating magnetic shielding shells that create voids in the magnetic field, without significantly disturbing the magnetic field used for imaging. This allows the linac to operate on the MRIdian gantry as if there were no magnetic field present. MRIdian Linac uses the same split-magnet MRI system used in the first generation MRIdian system. It is specifically designed to fit in standard radiotherapy vaults so that customers do not need to build new vaults in order to replace an X-ray guided linear accelerator with a MRIdian.

Integrated Treatment Planning and Delivery Software

Our proprietary treatment planning and delivery adaptive treatment software works with the integrated patented split-magnet MRI System, unobstructed radiation beam path and optimal SAD of the Radiation Delivery System to unlock beam dosimetry, sharp SRS and SBRT-tailored penumbra, and high dose rate beam delivery. MRIdian A3i includes enhanced on-table adaptive workflow efficiency through, workflow automation, auto-contouring tools, intrafraction “scan and adapt” option and a collaborative on-table adaptation integrated remote access platform.

Installed Base and Clinical Use

At December 31, 2022, a total of 56 MRIdian systems are in operation worldwide, of which 55 are MRIdian Linac systems and one is a MRIdian with Cobalt-60 system. We have 26 in the United States and 30 outside the United States. In addition, 16 MRIdian Linacs have been delivered to customers that are in varying stages of deployment.

New Orders and Backlog

New orders are defined as the sum of gross product orders, representing MRIdian contract price, recorded in backlog during the period. Backlog is the accumulation of all orders for which revenue has not been recognized and which we consider valid. Backlog includes customer deposits or letters of credit, except when the sale is to a customer where a deposit is not deemed necessary or customary. Deposits received are recorded as customer deposit, which is a liability on the balance sheet. Orders may be revised or cancelled according to their terms or upon mutual agreement between the parties. Therefore, it is difficult to predict with certainty the amount of backlog that will ultimately result in revenue. The determination of backlog includes objective and subjective judgment about the likelihood of an order contract becoming revenue. We perform a quarterly review of backlog to verify that outstanding orders in backlog remain valid, and based upon this review, orders that are no longer expected to result in revenue are removed from backlog. Among other criteria we use to determine whether a transaction qualifies for inclusion in backlog, we must possess both an outstanding and effective written agreement for the delivery of a MRIdian signed by a customer. We also require a minimum customer deposit or a letter of credit requirement, except when the sale is to a customer where a deposit is not deemed necessary or customary (e.g., sale to a government entity, a large hospital, group of hospitals or cancer care group that has sufficient credit, sales via tender awards, or indirect channel sales that have signed contracts with end-customers). We decide whether to remove or add back an order from or to our backlog by evaluating the following criteria: changes in customer or distributor plans or financial conditions; the customer’s or distributor’s continued intent and ability to fulfill the order contract; changes to regulatory requirements; the status of regulatory approval required in the customer’s jurisdiction, if any; and other reasons for potential cancellation of order contracts.

We received new orders for MRIdian systems, totaling $191.0 million, $158.9 million and $94.6 million in fiscal years 2022, 2021 and 2020, respectively. Based on our periodic assessments, we removed $36.4 million, $30.4 million and $36.1 million from the backlog for fiscal years 2022, 2021 and 2020, respectively. At December 31, 2022, we had a backlog with

a total value of $380.2 million. There can be no assurance that backlog will result in revenue in any particular time period or at all.

Installation Process

Following execution of an order contract, upon project commencement, it generally takes nine to 15 months for a customer to customize an existing facility or construct a new vault, although in some cases customers may request installation for a date later in the future to meet their own clinical or business requirements. After the customer completes its vault customization, it typically takes approximately 45 to 60 days for us to install MRIdian and perform on-site testing of the system, including the completion of acceptance test procedures. MRIdian is designed to fit into a typical radiation therapy vault, similar to other replacement linear accelerators. MRIdian's components all fit through standard hospital vault entrances for assembly. On-site training takes approximately one week and can be conducted concurrent with installation and acceptance testing.

Our customers are responsible for removing any outgoing linear accelerator equipment and preparing the room for the MRIdian system unless otherwise stipulated within the contract with the customer. This includes ensuring adequate radiation and radio frequency shielding, preparing the floor for the mounting plate, and upgrading facility utilities to meet system requirements.

Clinical Development

To date, we have primarily relied on clinical symposia and case studies presented at ASTRO and the European Society for Radiotherapy and Oncology ("ESTRO"), to raise awareness of MR Image-Guided radiation therapy and to market MRIdian to leading cancer centers. Additionally, centers have published hundreds of peer-reviewed articles on the technical and clinical benefits of MRIdian.

In order to promote broader adoption rates at other cancer centers and hospitals, we plan to work with our customers to continue to collect and publish data on clinical efficacy, treatment times and clinical results for patients who have been treated on a MRIdian. ViewRay sponsored a prospective trial, Stereotactic MRI-guided On-table Adaptive Radiation Therapy ("SMART") for Locally Advanced Pancreatic Cancer, and completed enrollment between January 2019 and January 2022. The initial study results were presented at ASTRO 2022. The primary endpoint of this study was met with no patients having acute grade ≥ 3 GI toxicity definitely attributed to SMART. Early efficacy outcomes are promising and additional follow-up is ongoing to evaluate late toxicity and long-term efficacy.

The results of the SMART study have prompted ViewRay to further investigate the treatment of pancreatic cancer. A phase III randomized controlled trial titled "Locally Advanced Pancreatic cancer treated with ABLATivE stereotactic MRI-guided adaptive radiation therapy" – also known as LAP-ABLATE – is intended to begin in the first half of 2023. LAP-ABLATE will compare stand-alone multi-agent chemotherapy, which is the current standard of care for patients with locally advanced pancreatic cancer, to patients receiving a combination of chemotherapy and 5-fraction MRIdian SMART (stereotactic MR-guided adaptive radiotherapy). The study is designed to demonstrate superior overall survival in patients receiving post-chemotherapy MRIdian SMART. The anticipated enrollment target is 267 patients over an estimated three-year period.

The MIRAGE trial is a single-center, randomized study conducted at the University of California, Los Angeles ("UCLA") and successfully met the primary superiority endpoint that MR-guided SBRT versus CT-guided SBRT results in statistically significant reduction in acute toxicity. On January 12, 2023 it was reported that the study enrolled 156 patients (77 receiving CT and 79 receiving MRIdian treatments). UCLA concluded that MRI-guided prostate SBRT affords significantly reduced toxicity compared with CT-guided therapy.

While we do not currently have statistically significant, prospective evidence that MRIdian improves patient outcomes or decreases healthcare costs relative to CT-based radiotherapy, we believe our sponsorship and support for studies will demonstrate the benefits of MR Image-Guided radiation therapy and adaptive treatment planning. As data accumulate from the use of MRIdian, we plan to work with professional healthcare organizations to support further global marketing efforts, additional product clearances, approvals and/or registrations, potential improvements in reimbursement and delivery system reforms.

Selling and Marketing

We currently market MRIdian through a direct sales force in the United States. In the rest of the world, we market MRIdian through a hybrid model of both a direct sales force and distribution network. We market MRIdian to a broad range of worldwide customers, including university research and teaching hospitals, community hospitals, private practices, government institutions and freestanding cancer centers. As with the conventional linac market, our sales and revenue cycles vary based on the particular customer and can be lengthy, sometimes lasting up to 18 to 24 months (or more) from initial customer contact to order contract execution.

To sell MRIdian globally, we use a combination of sales executives, sales directors and a network of international third-party distributors with internal support from sales operations, product management and application specialists. A targeted group of sales directors are responsible for selling MRIdian within the United States. Our product management function helps market MRIdian and works with our engineering group to identify and develop upgrades and enhancements. We also have a team of program development managers who provide post-sales support.

We engage in various physician-targeted advertising efforts, and our selling and marketing practices include virtual symposia, webinars, participating in trade shows and symposia, as well as direct marketing efforts and patient education.

Competition

We compete with companies marketing IGRT devices for the treatment of cancer using MRI, CT, ultrasound, optical tracking and X-ray imaging. We also compete with companies developing next-generation IGRT devices, specifically those developing MR Image-Guided devices, among others. We expect the following to drive worldwide competitive market dynamics; technological advances, including the ability to provide real-time imaging; clinical outcomes; reimbursement; system size, price, and operational complexity; and operational efficiency.

Our major competitors with devices approved for distribution in the U.S. or globally include Accuray Incorporated (“Accuray”), Elekta AB (“Elekta”), and Siemens Healthineers, through its Varian Medical Systems division. Many of our direct competitors have greater financial, sales and marketing, service infrastructure and research and development capabilities than we do, as well as more established reputations and current market share.

Other Image Guided therapy devices. Oncology Solutions Ltd. ("MagnetTX") received FDA 510(k) clearance for its MRI linac product, Aurora-RT, and in February 2023, the FDA authorized RefleXion Medical Inc. to market its biology-guided radiotherapy product, Scintix, for tumors in the lung and bone. Although early-stage companies may not present significant competition, if they were to progress commercially, it could impact our sales negatively.

Elekta and MagnetTX are currently the only competitors that also market an MRI-guided device combined with a linear accelerator.

The limited capital expenditure budgets of our customers result in all suppliers to these entities competing for a limited follow-on effects potential customers may consider more expensive proton therapy systems, which could consume a significant portion of their capital expenditure budgets.

Manufacturing

We have adopted a model in which we rely on subsystem manufacturing, assembly and testing by our key suppliers. The MRIdian subsystems are then fully integrated at the customer site. Through this approach, we avoid the majority of the fixed cost structure of manufacturing facilities. We purchase major components and subsystems for MRIdian from national and international third-party original equipment manufacturers suppliers and contract manufacturers. These major components include the magnet, MRI electronics, ring gantry, radiation therapy heads, linear accelerator, multi-leaf collimators, patient-treatment table and computers. We also purchase minor components and manufacture parts directly ourselves. For sales for which we are responsible for installation, we assemble and integrate these components with our proprietary software and perform multiple levels of testing and qualification at the customer site. The system undergoes a final acceptance test, which is performed in conjunction with the customer.

Many of the major subsystems and components of MRIdian are currently procured through single and sole source suppliers. Among these are the magnet, MRI electronics, MRI coils, ring gantry, linear accelerator and the patient-treatment table. We have entered into multi-year supply agreements for most of our major components and subsystems.

We manage our supplier relationships with scheduled business reviews and periodic program updates. We closely monitor supplier quality and delivery performance to ensure compliance with all MRIdian system specifications. We believe our supply chain has adequate capacity to meet our projected sales over the next several years; however, the follow-on impacts from the COVID-19 pandemic have had negative effects on our supply chain which have negatively impacted our costs and gross margin.

Intellectual Property

The proprietary nature of, and protection for, MRIdian components, new technologies, processes and know-how are important to our business. Our policy is to seek patent protection in the United States and in certain foreign jurisdictions for our MRIdian systems and other technology where available and when appropriate. We also in-license technology, inventions and improvements we consider important to the development of our business.

We hold an exclusive license to five issued U.S. patents, four issued foreign patents, and one pending U.S. application as of February 1, 2023. We own an additional 43 issued U.S. patents, 122 issued foreign patents (70 of which were issued in Great Britain, Germany, France, Italy, and the Netherlands as a result of 14 patent applications filed and allowed through the European Patent Office), 19 pending U.S. applications and 45 pending foreign applications as of February 1, 2023.

Assuming all required fees are paid, individual patents or patent applications owned or licensed by us will expire between 2025 and 2042. We also have a joint ownership interest with Case Western Reserve University in two U.S. issued patents.

Our portfolio includes patents and patent applications directed to system-wide aspects of MRIdian and to key aspects of its subsystems and components. The initial licensed patents for our core technology broadly cover the simultaneous use of MR imaging and isotopic external-beam radiation therapy and we have issued U.S. and foreign patents and pending continuation applications that extend this core technology to alternate beam technologies. Additionally, we have patents and patent applications that cover critical design elements including, among others, our methods for integrating MRI with the radiation delivery system, and the design of our disassemble, or “pop apart,” magnet which enables the MRI sub-system to fit into most standard radiation therapy vaults. In addition, we have U.S., and foreign patents and patent applications that cover technologies enabling the use of MR-imaging at a frequency sufficient to account for real-time organ motion to provide video-rate tissue tracking in disciplines in and outside of radiation therapy. Furthermore, we have patents issued in the U.S., Canada, Europe, Japan, and China, and additional applications pending in the U.S. and foreign jurisdictions, specifically directed to technology enabling the MRIdian Linac combination of MRI and linear accelerator technology.

We continue to review new technological developments in our system and in the field as a whole, in order to make decisions about what filings would be most appropriate for us. An additional key component of our intellectual property is our proprietary software used in planning and delivering MRIdian’s therapeutic radiation dose.

In December 2004, we entered into a licensing agreement with the University of Florida Research Foundation, Inc. ("UFRF"), whereby UFRF granted us a worldwide exclusive license to certain of UFRF’s patents in exchange for 33,653 shares of common stock and a royalty from sales of products developed and sold by us utilizing the licensed patents. Royalty payments are based on 1% of net sales, defined as the amount collected on sales of licensed products and/or licensed processes after deducting trade and/or quantity discounts, credits on returns and allowances, outbound transportation costs paid and sales tax. Minimum quarterly royalty payments of $50,000 commenced with the quarter ended March 31, 2014 and are payable in advance. Minimum royalties paid in any calendar year will be credited against earned royalties for that calendar year. The royalty payments continue until the earlier of (i) the date that no licensed patents remain enforceable; or (ii) the payment of earned royalties, once begun in 2014, cease for more than four consecutive calendar quarters. In addition to our patents, we also rely upon trade secrets, know-how, trademarks, copyright protection and continuing technological and licensing opportunities to develop and maintain our competitive position. We have periodically monitored and continue to monitor the activities of our competitors and other third parties with respect to their use of intellectual property. We require our employees, consultants and outside scientific collaborators to execute confidentiality and invention assignment agreements upon commencing employment or consulting relationships with us. Despite these safeguards, any of our know-how or trade secrets not protected by a patent could be disclosed to, or independently developed by, a competitor.

Coverage and Reimbursement

We believe that reimbursement rates in the United States have generally supported a favorable return on investment for the purchase of new radiotherapy equipment, including MRIdian. Standard radiation therapy treatments using MRIdian, including 3D-CRT, IMRT and SBRT, are generally reported under existing Current Procedural Terminology ("CPT") codes. Most payers, including Medicare, generally cover standard radiation therapy treatments furnished in outpatient hospital and free-standing centers.

Third-party payors, including public programs such as Medicare and Medicaid, establish coverage policies and reimbursement rates for procedures performed by physicians in hospitals and free-standing clinics. For example, the Centers for Medicare & Medicaid Services (“CMS”) publishes annual updates to the hospital outpatient prospective payment system (“HOPPS”) which is used to pay for services performed in hospital outpatient departments. CMS also publishes annual updates to the Medicare physician fee schedule (“MPFS”) which is used to pay for services performed by physicians in all sites of service. The MPFS is also used by Medicare to pay for services furnished in free-standing radiation therapy centers. The U.S. Congress from time to time considers various Medicare and other healthcare reform proposals that could affect both private and public third-party payor coverage and reimbursement for healthcare services provided in hospitals and clinics. Private insurers often model their payment rates and coverage policies based on those established by Medicare. These third-party payors regularly update reimbursement amounts, including annual updates to payments to physicians, hospitals and clinics for medical procedures, including radiation treatments using MRIdian.

In 2019, CMS proposed an alternative payment model, the Radiation Oncology Model ("RO Model"), for a majority of cancers that are typically treated with radiation therapy ("RT"). However, after several delays, CMS announced in late 2022 that the RO model has been indefinitely delayed.

Foreign Reimbursement Regulations

Healthcare delivery, financing and payment systems vary from country to country and include single-payor and multiple public and private payors as well as public and private ownership of hospitals and centers. Our ability to achieve adoption

of MRIdian, as well as significant sales volume in international markets we enter will depend in part on the availability of reimbursement for procedures performed using MRIdian, demonstrating the value of MRIdian for payers and purchasers, and in some countries, funding for capital equipment purchases.

Research and Development

Continued innovation and development of advanced technologies is critical to our goal of making MR Image-Guided radiation therapy a standard of care for cancer treatment. Our current development activities include improvements in and expansion of product capabilities, continued clinical workflow refinements, design improvements to reduce system costs and improvements in reliability.

The modular design of MRIdian enables the development of new capabilities and performance enhancements by generally allowing each subsystem to evolve within the overall platform design. Access to regular MRIdian upgrades protects customer investment in MRIdian and facilitates customer adoption of new features and capabilities. In addition, we believe our IP portfolio will enable us to continuously develop innovative technologies to further differentiate MRIdian.

Government Regulation

U.S. Medical Device Regulation and Nuclear Materials Regulation

As a manufacturer and seller of medical devices and devices that deliver radiation, we and some of our suppliers and distributors are subject to extensive and rigorous regulation by the FDA, the Nuclear Regulatory Commission, (“NRC”), other federal, state, and local authorities in the U.S. and foreign regulatory authorities. The U.S. Food, Drug, and Cosmetic Act (“FDCA”) and the regulations promulgated by the FDA relating to medical devices and radiation-producing devices govern, among other things, the following activities that we perform or that are performed on our behalf, and that we will continue to perform or have performed on our behalf:

- product design, development and testing;
- manufacturing;
- approval or clearance;
- packaging, labeling and storage;
- marketing, advertising and promotion, sales;
- distribution, including importing and exporting;
- installation;
- possession and disposal;
- record keeping;
- service and surveillance, including post-approval monitoring and reporting;
- complaint handling; and
- repair or recall of products and issuance of field safety corrective actions.

FDA Clearance and Approval of Medical Devices

The FDA regulates medical devices in the United States to ensure that medical products distributed domestically are safe and effective for their intended uses. Unless an exemption applies, the FDA requires that all new medical devices and all marketed medical devices that have been significantly changed, or that will be marketed with a new indication for use, obtain either clearance via a 510(k) premarket notification or approval via a Premarket Approval ("PMA") application before the manufacturer may commercially market or distribute the product in the United States.

The FDA classifies medical devices into one of three classes, Class I, Class II, and Class III. All generations of the MRIdian system have been classified as Class II medical devices subject to the 510(k) clearance process.

Devices deemed to pose the lowest risk are placed in Class I.

Moderate risk devices are placed in Class II, for which safety and effectiveness can be reasonably assured by adherence to: (i) a set of regulations referred to as General Controls, which require compliance with the applicable portions of the FDA’s Quality System Regulation ("QSR") (ii) Special Controls, which can include performance standards, guidelines and post-market surveillance; and (iii) regulations regarding facility registration and product listing, reporting of adverse events and malfunctions, and appropriate, truthful and non-misleading labeling and promotional materials. Most Class II devices are subject to 510(k) premarket review and clearance by the FDA.

Devices deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices, or devices deemed not substantially equivalent to a previously cleared 510(k) devices are placed in Class III.

510(k) clearance process. Most Class II devices are subject to premarket review and clearance by the FDA, which is accomplished through the 510(k) premarket notification process. Under the 510(k) process, the manufacturer must

submit to the FDA a premarket notification, demonstrating that the device is “substantially equivalent” to a “predicate” device, which is a legally marketed similar device that is not subject to PMA requirements.

To be “substantially equivalent,” the proposed device must have the same intended use as the predicate device and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data are sometimes required to support substantial equivalence. The FDA is in the process of evaluating and implementing significant reforms to the device premarket review process, such as encouraging 510(k) applicants to use newer predicate devices to demonstrate substantial equivalence, and other policies that are intended to promote the use of modern technologies, improve the efficiency of the review process, and protect the public health.

The process of obtaining 510(k) clearance usually takes from three to 12 months from the date the application is filed and generally requires submitting supporting design and test data, which can be extensive and can prolong the process for a considerable period of time. If the FDA agrees that the device is substantially equivalent, it will grant clearance to commercially market the device.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a new or major change in the intended use of the device, may require a new 510(k) clearance or, depending on the modification, could require approval of a PMA. The FDA requires each manufacturer to make this determination in the first instance, but the FDA can review any such decision. If the FDA disagrees with the manufacturer’s decision, it may retroactively require the manufacturer to submit a request for 510(k) clearance or PMA approval and can require the manufacturer to cease marketing and/or recall the product in the United States until 510(k) clearance or PMA approval is obtained.

We received 510(k) clearances for the treatment planning and delivery software system in January 2011 and for MRIdian in May 2012. Since obtaining 510(k) clearances in 2011 and 2012, we have made changes to MRIdian that we believe do not require further 510(k) clearance.

In February 2017, we received 510(k) clearance from the FDA to market the MRIdian Linac system in the U.S. We received 510(k) clearance from the FDA for modifications of the MRIdian Linac system in June 2017 and February 2019.

In December 2021, we received 510(k) clearance for MRIdian A3i and BrainTx, which includes multi-planar tissue tracking, automated beam gating on multiple planes simultaneously, a new brain treatment package, and the integration of a real-time patient feedback display.

Clinical trials. Clinical trials are sometimes required for 510(k) clearance. Clinical trials are subject to extensive monitoring, record keeping and reporting requirements. Clinical trials must be conducted under the oversight of an institutional review board ("IRB") for the relevant clinical trial sites and must comply with FDA regulations, including but not limited to those relating to good clinical practices. To conduct a clinical trial, the patient’s informed consent must be obtained in form and substance that complies with both FDA requirements and state and federal privacy and human subject protection regulations. The clinical trial sponsor, the FDA or the IRB could suspend or terminate a clinical trial at any time for various reasons, including a belief that the subjects are being exposed to an unacceptable health risk. Even if a trial is completed, the results of clinical testing may not adequately demonstrate the safety and effectiveness of the device or may otherwise not be sufficient to obtain FDA clearance or approval to market the product.

Continuing FDA regulation. Any devices we manufacture or distribute pursuant to 510(k) clearance or PMA approval by the FDA are subject to pervasive and continuing regulation by the FDA and certain state agencies. These include product listing and establishment registration requirements, which help facilitate FDA inspections and other regulatory actions.

In addition, our manufacturing operations for medical devices and those of our suppliers must comply with the FDA’s Quality System Regulation ("QSR"). The QSR requires that each manufacturer, including third party manufacturers, establish and implement a quality system by which the manufacturer monitors the manufacturing process and maintains records that show compliance with FDA regulations and the manufacturer’s written specifications and procedures. Among other things, the QSR requires that manufacturers establish performance requirements before production and follow stringent requirements applicable to the device design, testing, production, control, record keeping, documentation, labeling and installation, as well as supplier/contractor selection, complaint handling and other quality assurance procedures during all aspects of the manufacturing process. Compliance with the QSR is necessary to be able to continue to market medical devices that have received FDA approval or clearance, and to receive FDA clearance or approval to market new or significantly modified medical devices. The FDA makes announced and unannounced inspections of medical device manufacturers, and these inspections may include the manufacturing facilities of subcontractors. Following an inspection, the FDA may issue a FDA Form 483 report that describes the conditions or practices that the FDA investigator believes are in violation of FDA’s requirements. For example, we received a Voluntary Action Indicated (“VAI”) FDA Form 483 in December 2021, which included seven (7) inspectional observations. We promptly responded to the FDA with completed corrective actions for four of the inspectional observations and detailed our plan to address the remaining three inspectional observations in a timely manner. FDA may also issue warning letters documenting regulatory violations observed during an inspection, for failure to adequately address inspectional observations, or for other violations of the FDCA. The

manufacturer's failure to adequately and promptly respond to such reports or warning letters may result in further FDA enforcement action against the manufacturer and related consequences, including, among other things, fines, injunctions, civil penalties, recalls or seizures of products, total or partial suspension of production, FDA refusal to grant 510(k) clearance or PMA approval, withdrawal of existing clearances or approvals, and criminal prosecution.

Manufacturers must also comply with post-market surveillance regulations, including medical device reporting regulations, which require that manufacturers review and report to the FDA any incident in which their device may have caused or contributed to a death or serious injury, or malfunctioned in a way that would likely cause or contribute to a death or serious injury if it were to recur. In addition, corrections and removals reporting regulations require that manufacturers report to the FDA field corrections and product recalls or removals if undertaken to reduce a risk to health posed by the device or to remedy a violation of the FDCA that may present a risk to health. The FDA may also order a mandatory recall if there is a reasonable probability that the device would cause serious adverse health consequences or death.

The FDA and the Federal Trade Commission ("FTC"), also regulate the promotion and advertising of MRIdian. In general, we may not promote or advertise MRIdian for uses not within the scope of our clearances or approvals or make unsupported safety and effectiveness claims.

Failure to comply with applicable FDA requirements, including delays in or failures to report incidents to the FDA or for promoting devices for unapproved or uncleared uses, can result in enforcement action by the FDA, such as:

- warning letters, untitled letters, fines, injunctions, consent decrees and civil penalties;
- customer notifications or repair, replacement, refunds, recall, administrative detention or seizure of our MRIdian systems;
- operating restrictions or partial suspension or total shutdown of production;
- refusing or delaying requests for 510(k) clearance or PMA approval of new or modified products;
- withdrawing 510(k) clearances or PMA approvals that have already been granted;
- refusal to grant export approval for products; or
- criminal prosecution.

Radiological health. We are also regulated by the FDA under the Electronic Product Radiation Control provisions of the FDCA because MRIdian contains radiation producing components, and because we assemble these components during manufacturing and service activities. The Electronic Product Radiation Control provisions require radiation producing products to comply with certain regulations and applicable performance standards. Manufacturers are required to certify in product labeling and reports to the FDA that their products comply with all necessary standards as well as maintain manufacturing, testing and sales records for their products. The Electronic Product Radiation Control provisions also require manufacturers to report product defects and affix appropriate labeling to covered products. Failure to comply with these requirements could result in enforcement action by the FDA, which can include any of the sanctions described above.

Nuclear Regulatory Commission and U.S. State Agencies

In the United States, as a manufacturer of a medical device utilizing radioactive byproduct material (i.e. depleted uranium shielding and Cobalt-60 sources), we are subject to extensive regulation by not only federal governmental authorities, such as the NRC, but also by state and local governmental authorities, such as the Ohio Department of Health, to ensure such device is safe and effective. In Ohio, the Department of Health, by agreement with the NRC, regulates the possession, use, and disposal of radioactive byproduct material as well as the manufacture of devices containing radioactive sealed sources to ensure compliance with state and federal laws and regulations. We have received sealed source device approval from the Ohio Department of Health for MRIdian and have entered into a standby letter of credit with PNC to provide certification of financial assurance for decommissioning Cobalt-60 radioactive materials in accordance with Ohio Department of Health regulations. We and/or our supplier of radiation sources must also comply with NRC and U.S. Department of Transportation regulations on the labeling and packaging requirements for shipment of radiation sources to hospitals or other users of MRIdian. Compliance with NRC, state and local requirements is required for distribution, installation, use and service within each state that we intend to install MRIdian systems.

Existing radiation therapy facilities practicing nuclear medicine, brachytherapy or other therapies are already required to have necessary NRC and/or state licenses and a radiation safety program requiring compliance to various provisions under NRC regulations at Part 35 of Title 10 of the Code of Federal Regulations ("Medical uses of byproduct material"). Use of MRIdian is regulated under Section 35.1000 of the NRC's regulations ("Other medical uses of byproduct material or radiation from byproduct material"). In 2013, the NRC released licensing guidance under its regulations to guide our customers in the NRC requirements applicable to the use of MRIdian. We believe that this guidance is favorable in that it is consistent with clinical use of existing image-guided radiation therapy devices.

Moreover, our use, management, and disposal of certain radioactive substances and wastes are subject to regulation by several federal and state agencies depending on the nature of the substance or waste material. We believe that we are in compliance with all federal and state regulations for this purpose.

Outside the United States, various laws apply to the import, distribution, installation and use of MRIdian, in consideration of the nuclear materials within MRIdian. In this regard, we believe that the MRIdian Linac complies with applicable regulations.

U.S. Privacy and Security Laws

We may also be subject to data privacy and security regulation by both the federal government and the states in which we conduct our business. The federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by the Health Information Technology and Clinical Health Act ("HITECH"), and their respective implementing regulations, including the final omnibus rule published on January 25, 2013, imposes specified requirements relating to the privacy, security and transmission of individually identifiable health information. Further, “business associates,” defined as independent contractors or agents of covered entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity are also subject to certain HIPAA privacy and security standards. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney’s fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

U.S. Fraud and Abuse Laws and Regulations

The healthcare industry is also subject to a number of fraud and abuse laws and regulations, including physician anti-kickback, false claims and physician payment transparency laws. Violations of these laws can lead to civil and criminal penalties, including exclusion from participation in federal healthcare programs and significant monetary penalties, among others. These laws, among other things, constrain the sales, marketing and other promotional activities of manufacturers of medical products, such as us, by limiting the kinds of financial arrangements we may have with hospitals, physicians and other potential purchasers of medical products who may seek reimbursement from a federal or state health care program such as Medicare or Medicaid.

Anti-kickback laws. The federal Anti-Kickback Statute makes it a criminal offense to knowingly and willfully solicit, offer, receive or pay any remuneration in exchange for, or to induce, the referral of business, including the purchase, order, lease of any good, facility, item or service, that are reimbursable by a state or federal health care program, such as Medicare or Medicaid. The term “remuneration” has been broadly interpreted to include anything of value. The Anti-Kickback Statute has been interpreted to apply to the purchase of medical devices from a particular manufacturer or the referral of patients to a particular supplier of diagnostic services utilizing such devices. Although, there are established statutory exceptions and regulatory safe harbors that define certain financial transactions and practices that are not subject to the Anti-Kickback Statute, the exceptions and safe harbors are drawn narrowly. Failure to meet all of the requirements of a particular applicable statutory exception or regulatory safe harbor does not make the conduct per se illegal under the Anti-Kickback Statute. Instead, the legality of the arrangement will be evaluated on a case-by-case basis based on a cumulative review of all its facts and circumstances.

Generally, courts have taken a broad interpretation of the scope of the Anti-Kickback Statute, holding that the statute may be violated if merely one purpose of a payment arrangement is to induce referrals or purchases. Further, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation.

Violations of this law are punishable by up to five years in prison, and can also result in criminal fines, administrative civil money penalties and exclusion from participation in federal healthcare programs. In addition, 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. Many states have also adopted statutes similar to the federal Anti-Kickback Statute, some of which apply to payments in connection with the referral of patients for healthcare items or services reimbursed by any source, not only governmental payor programs.

False Claims Act. The federal civil False Claims Act prohibits anyone from knowingly and willfully presenting, or causing to be presented, claims for payment, that are false or fraudulent, such as claims for payment of services not provided as claimed. In addition to actions initiated by the government itself, the statute authorizes actions to be brought on behalf of the federal government by a private party having knowledge of the alleged fraud called a “relator”. Because the complaint is initially filed under seal, the action may be pending for some time before the defendant is even aware of the action. If the government is ultimately successful in obtaining redress in the matter or if the relator succeeds in obtaining redress without the government’s involvement, then the relator is typically entitled to receive a percentage of the recovery. When an entity is determined to have violated the False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim, and may be excluded from participation in federal health care programs, and, although the federal False Claims Act is a civil statute, violations may also implicate various federal criminal statutes. Several states have also adopted comparable state false claims act, some of which apply to all payors.

Civil monetary penalties laws. The civil monetary penalties statute imposes penalties against any person or entity that, among other things, is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent.

Other fraud and abuse laws. HIPAA also created new federal criminal statutes that prohibit among other actions, knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payors, knowingly and willfully embezzling or stealing from a healthcare benefit program, willfully obstructing a criminal investigation of a healthcare offense, 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 healthcare benefits, items or services. Further, a person or entity does not need to have actual knowledge of the statue or specific intent to violate it in order to have committed a violation.

Physician payment transparency laws. There has been a recent trend of increased federal and state regulation of payments made to physicians and other healthcare providers and entities. The Affordable Care Act, among other things, imposed new reporting requirements on certain manufacturers, including certain device manufacturers, for payments provided to physicians and teaching hospitals, as well as ownership and investment interests held by physicians and their immediate family members. Failure to submit timely, accurately, and completely the required information may result in civil monetary penalties for “knowing failures.” Device manufacturers must submit reports by the 90th day of each calendar year.

Certain states also mandate implementation of compliance programs, impose restrictions on device manufacturer marketing practices and/or require the tracking and reporting of gifts, compensation and other remuneration to healthcare providers and entities.

The laws and regulations and their enforcement are constantly undergoing change, and we cannot predict what effect, if any, changes may have on our business. In addition, new laws and regulations may be adopted which adversely affect our business. There has been a trend in recent years, both in the United States and internationally, toward more stringent regulation and enforcement of requirements applicable to medical device manufacturers and requirements regarding protection and confidentiality of personal data.

State Certificate of Need Laws

In some states, a certificate of need ("CON"), or similar regulatory approval is required by hospitals and other healthcare providers prior to the acquisition of high-cost capital items, including MRIdian, or the provision of new services. These laws generally require appropriate state agency determination of public need and approval prior to the acquisition of such capital items or addition of new services. CON requirements may preclude our customers from acquiring, or significantly delay acquisition of, MRIdian and/or from performing treatments using MRIdian. CON laws are the subject of ongoing legislative activity, and a significant increase in the number of states regulating the offering and use of MRIdian through CON or similar requirements could adversely affect us.

Healthcare Reform

In the United States and foreign jurisdictions, there have been, and we expect there will continue to be, a number of legislative and regulatory changes to the healthcare system seeking, among other things, to reduce healthcare costs that could affect our results of operations.

Congress may seek changes in the Affordable Care Act, Medicare, RO Model and other federal health care programs that impact our business. Any changes in the Affordable Care Act, Medicare, RO Model or other federal health care programs may affect how state and federal governments and employers pay for health care products and services. Such changes could result in reduced demand for MRIdian or additional pricing pressure.

Similarly, we expect governments in other countries to continue introducing changes in their delivery, financing, and payment systems to reduce costs and improve outcomes. Some of these changes could result in reduced demand for MRIdian and bring additional price pressure.

Foreign Regulation of Medical Devices

Our activities outside the United States are subject to regulatory requirements that vary from country to country and frequently differ significantly from those in the United States. Failure to obtain and maintain regulatory approval or clearance in any foreign country in which we market or plan to market MRIdian and MRIdian Linac may have a negative effect on our ability to generate revenue and harm our business.

In general, MRIdian and MRIdian Linac are regulated outside the United States as medical devices by foreign governmental agencies similar to the FDA and the FTC. In addition, in foreign countries where we have operations or sell MRIdian, we are subject to laws and regulations applicable to manufacturers of medical devices, radiation producing devices and to the healthcare industry, and laws and regulation of general applicability relating to environmental protection, safe working conditions, manufacturing practices and other matters. These laws and regulations are often comparable to, or more stringent than U.S. laws and regulations. Our sales of MRIdian in foreign countries are also subject to regulation of

matters such as product standards, packaging requirements, labeling requirements, import restrictions, tariff regulations, duties and tax requirements. We rely in some countries on our foreign distributors to assist us in complying with applicable regulatory requirements.

Regulation in the EU

In the European Union (the "EU") we are required under the European Medical Device Directive (Council Directive 93/42/EEC) to affix the CE mark to our MRIdian systems in order to sell the MRIdian systems in member countries of the EU. The CE mark is an international symbol that represents adherence to certain essential principles of safety and effectiveness mandated in the European Medical Device Directive (the so-called “essential requirements”). Once affixed, the CE mark enables a product to be sold within the EEA, which is composed of the 27 Member States of the EU plus Norway, Iceland and Liechtenstein.

To demonstrate compliance with the essential requirements, we must undergo a conformity assessment procedure which varies according to the type of medical device and its classification. Except for certain low risk medical devices where the manufacturer can issue an EC Declaration of Conformity based on a self-assessment of the conformity of its products with the essential requirements of the Medical Devices Directive, a conformity assessment procedure requires the intervention of an organization accredited by a Member State of the EEA to conduct conformity assessments, or a Notified Body. Depending on the relevant conformity assessment procedure, the Notified Body would typically audit and examine the technical file and the quality system for the manufacture, design and final inspection of our devices. The Notified Body issues a CE Certificate of Conformity following successful completion of a conformity assessment procedure conducted in relation to the medical device and its manufacturer and their conformity with the essential requirements. This Certificate entitles the manufacturer to affix the CE mark to its medical devices after having prepared and signed a related EC Declaration of Conformity.

In September 2016, we received approval for CE mark for our MRIdian Linac (with a linear accelerator as the radiation source) in the EEA. In December 2019, we received approval for CE mark for modifications of the MRIdian Linac system.

If we modify MRIdian we may need to undergo a new conformity assessment procedure to be able to affix the CE mark to the modified product. Additionally, we will need to undergo new conformity assessments for any new products that we may develop in the future before we are able to affix the CE mark to these new products. We cannot be certain that the outcome of these conformity assessments will be positive and that we will be able to affix the CE mark for modified or new products or that we will continue to meet the quality and safety standards required to maintain the CE marks that we already have or may have in the future. In addition, if we are unable to affix the CE mark to our future products, we would be unable to sell them in EU member countries.

In September 2012, the European Commission published proposals for the revision of the EU regulatory framework for medical devices. The proposals would replace the Medical Devices Directive and the Active Implantable Medical Devices Directive with two new regulations: the Medical Devices Regulation and the In-Vitro Diagnostic Medical Devices Regulation. Unlike directives, which must be implemented into the national laws of the EU Member States, the regulations would be directly applicable, i.e., without the need for adoption of EU Member State laws implementing them, in all EEA Member States and are intended to eliminate current differences in the regulation of medical devices among EEA Member States.

The Medical Devices Regulation applied to ViewRay starting on May 26, 2020. The new regulation among other things:

- strengthens the rules on placing devices on the market and reinforce surveillance once they are available;
- establishes explicit provisions on manufacturers' responsibilities for the follow-up of the quality, performance and safety of devices placed on the market;
- improves the traceability of medical devices throughout the supply chain to the end-user or patient through a unique identification number; and
- sets up a central database to provide patients, healthcare professionals and the public with comprehensive information on products available in the EU.

Regulation in Other Countries

We will be subject to additional regulations in foreign countries in which we intend to market, sell and import MRIdian. We or our distributors must receive all necessary approvals or clearance prior to marketing and importing MRIdian in those international markets. We received a license and permission to import MRIdian into 15 countries and MRIdian A3i into 1 country. We will seek approvals in other countries as may be required in the future.

The International Standards Organization ("ISO") promulgates internationally recognized standards, including those for the requirements of quality systems. We are certified to the ISO 13485:2016 standard, which specify the quality system requirements for medical device manufacturers. To support our ISO certifications, we are subject to surveillance audits by a Notified Body yearly and recertification audits every three years that assess our continued compliance with the relevant ISO standards. Our most recent recertification audit occurred in February 2021.

Teammates and Human Capital

At ViewRay, we believe our shared values and a culture where we truly care for and about one another is instrumental to our growth and success. We are passionate about attracting, retaining, and developing the best talent on the planet – it is essential to our success. At December 31, 2022, we had 295 full-time teammates, including our international teammates; 70 of our teammates were engaged in research and development, and 225 in sales and marketing, business development, finance, human resources, facilities and general management and administration. None of our teammates are covered by a collective bargaining agreement, and we have not experienced any work stoppages. We consider our relations with our teammates to be good.

We are engaged in an ongoing effort to attract, retain, and develop a diverse team ready for the challenge a growth company presents. We believe diversity and inclusion are more than just words – they are fundamental to ViewRay's shared values, which put Teammates at the center of all we do. We believe that we successfully attract and retain a qualified team in a highly competitive market due, in large part, to our strong culture, rewarding work environment, competitive compensation and benefits, and by encouraging continuous professional development.

General

We make our periodic and current reports, including our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements and any amendments to those reports, available free of charge, on our website as soon as practicable after such material is electronically filed or furnished with the Securities and Exchange Commission (the "SEC"). Our website address is www.viewray.com and the reports are filed under "SEC Filings", on the Company – Investor Relations portion of our website. Our Code of Business Conduct and Ethics, Corporate Governance Guidelines and the charters of the Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee are also available under "Corporate Governance", on the Investor Relations portion of our website. Investors and others should note that we announce material financial and operational information to our investors using our investor relations website (http://investors.viewray.com/), press releases, SEC filings and public conference calls and webcasts. Please note that information on, or that can be accessed through, our website is not deemed "filed" with the SEC and is not to be incorporated by reference into any of our filings under the Securities Act of 1933, as amended (the "Securities Act"), or the Securities Exchange Act of 1934, as amended (the "Exchange Act").

We operate our business as one segment as defined by U.S. generally accepted accounting principles. Our financial results for the years ended December 31, 2022, 2021 and 2020 are discussed in "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Item 8. Financial Statements and Supplementary Data" of this Annual Report.

We commenced operations as a Florida corporation in 2004 and subsequently reincorporated in Delaware in 2007. Our corporate headquarters are located at 1099 18th Street Suite 3000, Denver, Colorado 80202. Our telephone number is (440) 703-3210, and our website address is www.viewray.com.

Item 1A. RISK FACTORS

You should consider carefully the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K and other filings we have made and make in the future with the Securities and Exchange Commission, or the SEC. If any of the following risks are realized, our business, financial condition, results of operations and prospects could be materially and adversely affected.

Risk Factors Summary

The following is a summary of the principal risks that could adversely affect our business, financial condition, results of operations and prospects.

Risks Related to Our Business and Strategy

- The effects of the COVID-19 disease outbreak.
- Our incurrence of significant losses since our inception and anticipation that we will continue to incur significant losses.
- The ability of MRIdian to achieve and sustain sufficient market acceptance.
- Our ability to commercialize our MRIdian systems to achieve and maintain profitability.
- Our limited history commercializing MRIdian which may make it difficult to evaluate our current business and predict future performance.
- MRIdian systems may not perform as expected or may be less safe and effective than initially anticipated.
- Our ability to educate clinicians and patients about the benefits of MRIdian.
- Our ability to establish MRIdian as a standard of care and achieve market acceptance.
- Our limited experience in marketing and selling MRIdian.
- The long sales cycle, low unit volume sales and payment structure of MRIdian may contribute to substantial fluctuations in our operating results and stock price.
- Amounts included in backlog may not result in actual revenue.
- Our ability to increase gross margins by standardizing the selling price, reducing costs of MRIdian and improving our economies of scale.
- Our ability to develop new products or enhance the capabilities of MRIdian.
- The effects of competition.
- Negative press regarding MR Image-Guided radiation therapy for the treatment of cancer.
- Future acquisitions, joint ventures or investments could negatively affect our operating results, dilute our stockholders' ownership, increase our debt or cause us to incur significant expense.

Risks Related to Our Reliance on Third Parties

- Our dependence on third-party distributors to market, distribute, deliver and install MRIdian.
- Our reliance on third-party, and in some cases sole suppliers.
- Our reliance on third parties to perform logistics functions on our behalf.
- The provision of coverage and adequate payment to our customers by third party-payors.
- Compliance of our employees, consultants and commercial partners with regulatory standards and requirements.

Risks Related to Our Financial Condition and Capital Requirements

- We may need to raise additional capital.
- Costs of operating as a public company.
- Covenants and restrictions in our credit, security and guaranty agreement with MidCap Financial ("MidCap") and Silicon Valley Bank ("SVB").
- Our ability to use our net operating losses to offset future taxable income.
- The current global economic environment.

Risks Related to Administrative, Organizational and Commercial Operations and Growth

- Our ability to manage our future growth effectively.
- Our ability to support demand for MRIdian and our future products.
- The loss of or our inability to attract and retain key personnel.
- Our limited history of manufacturing, assembling and installing MRIdian in commercial quantities.
- Potential product liability or professional liability related lawsuits.
- International tariffs, including tariffs applied to our MRIdian systems sold into China.

- The results of the United Kingdom's withdrawal from the EU.
- Risks associated with our international business.
- Changes in foreign currency exchange rates.
- Compliance with anti-corruption laws and our internal policies designed to ensure ethical business practices.
- Export restrictions and laws affecting trade and investments.
- Dependence on our information technology systems.
- The effects of natural or other disasters, power loss, strikes and other events beyond our control.

Risks Related to Intellectual Property

- Litigation or other proceedings or third-party claims of intellectual property infringement.
- Our ability to adequately protect our proprietary technology or maintain issued patents.
- Compliance with our license agreement with the University of Florida Research Foundation, Inc.
- Changes in U.S. patent laws and their effect on our ability to obtain, defend or enforce our patents.
- Our ability to protect the confidentiality of our trade secrets.
- Our ability to enforce our intellectual property rights throughout the world.
- Third parties may assert ownership or commercial rights to inventions we develop.
- Third parties may assert that our employees or consultants have wrongfully used or disclosed confidential information or misappropriated trade secrets.
- Network or data security incidents.

Risks Related to Regulatory Matters

- We are subject to extensive government regulation and oversight.
- Modifications to our products may require new 510(k) clearances or PMA approvals.
- Changes in treatment guidelines for cancer radiation therapies and related regulatory requirements.
- The misuse or off-label use of MRIdian Linac.
- Our MRIdian systems may cause or contribute to adverse medical events.
- Compliance with legal or regulatory requirements related to privacy or data security.
- International regulatory registrations or approvals required to be able to market and sell MRIdian.
- Compliance with regulations regarding the manufacture of MRIdian.
- Legislative or regulatory reforms in the United States or the EU.
- Compliance with fraud and abuse laws and health information privacy and security laws.
- Healthcare policy changes, including legislation reforming the U.S. healthcare system.

Risks Related to Ownership of Our Common Stock

- The price of our common stock may be volatile.
- The impact of future sales of our common stock or securities convertible or exchangeable for our common stock.
- Future issuance of additional shares of our common or preferred stock or securities that are convertible into or exercisable for our common or preferred stock may cause dilution.
- Our operating results may fluctuate significantly or fall below the expectations of investors or analysts.
- Our principal stockholders and management own a significant percentage of our stock and will be able to exert significant control over matters subject to stockholder approval.
- Provisions of our charter documents or Delaware law could delay or prevent an acquisition of the Company.
- We do not anticipate paying any cash dividends on our common stock in the foreseeable future.
- If securities or industry analysts do not publish research, or publish inaccurate or unfavorable research, about our business, our stock price and trading volume could decline.

Risks Related to Environmental and Climate Concerns

- Our manufacturing operations are subject to a number of federal, state and local environmental laws, rules and regulations.
- Our business involves the use of hazardous materials and we and our third-party manufacturers must comply with environmental laws and regulations, which may be expensive and restrict how we do business.
- Regulations related to "conflict minerals".

For a more complete discussion of the material risks facing our business, see below.

Risks Related to Our Business and Strategy

The COVID-19 pandemic has and will continue to adversely affect our business operations and financial condition.

The COVID-19 pandemic and its follow-on effects have impacted and will continue to impact our business. Our sales and revenue cycles, including MRIdian orders, deliveries and installations, as well as our other business operations have been and are likely to continue to be significantly delayed as we experience adverse impacts, including but not limited to adverse impacts affecting our teammates, global supply chain partners, transportation service providers, and customers. For example, along with delays in service from our global supply chain partners, we have experienced delays in installation of systems in the United States, Asia and Europe due to the travel and quarantine restrictions imposed by government agencies and our customers in response to the spread of COVID-19.

Similarly, our ability to conduct commercial efforts with our customers has been and may continue to be disrupted as customers suspended in-person meetings and turned their focus toward the impact of COVID-19 on their operations. Lastly, many customers have reduced spending on capital equipment, redirected financial resources to pandemic-related expenses, or sought to preserve capital in anticipation of a prolonged pandemic. If our business operations continue to be adversely impacted by COVID-19, our costs associated with operating our business could be significantly higher than planned, which may have a material impact on our business. COVID-19 and its follow-on effects could also further adversely impact our teammate population, as well as our near-term and long-term revenues, earnings and cash flow and may require significant additional expenditures to mitigate such impacts.

Should COVID-19 and its follow-on effects persist, our ability to conduct our business and to access capital markets may be negatively impacted; and delays in capital equipment sales, which make up the majority of our revenue, may have a material impact on our business. The COVID-19 pandemic continues to evolve and shift rapidly, and its continued global economic impact may heighten the other risk factors described herein and negatively impact our operations in areas that we are not aware of currently.

We have incurred significant losses since our inception and anticipate that we will continue to incur significant losses for the foreseeable future. In the future, these factors may raise substantial doubt about our ability to continue as a going concern.

We have historically incurred substantial net losses, including net losses of $107.3 million, $110.0 million, and $107.9 million during the years ended December 31, 2022, 2021, and 2020, respectively. At December 31, 2022, we had an accumulated deficit of $844.5 million. We expect our net losses to continue as a result of ongoing investments in product development and expansion of our commercial operations, including increased manufacturing, and sales and marketing. These net losses have had, and will continue to have, a negative impact on our working capital, total assets and stockholders' equity. Because of the numerous risks and uncertainties associated with our development and commercialization efforts, we are unable to predict when we will become profitable, and we may never become profitable. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our inability to achieve and then maintain profitability would harm our business, financial condition, results of operations and cash flows.

Further, the net losses we incur may fluctuate significantly from quarter-to-quarter and year-to-year, such that a period-to-period comparison of our results of operations may not be a good indication of our future performance quarter-to-quarter and year-to-year, due to factors including the timing of product clearance, approval, commercial ramp, clinical trials, any litigation that we may file or that may be filed against us, the execution of collaboration, licensing or other agreements and the timing of any payments we make or receive under them. These factors may raise substantial doubt about our ability to continue as a going concern.

If clinicians do not widely adopt MR Image-Guided radiation therapy or MRIdian Linac fails to achieve and sustain sufficient market acceptance, we will not generate sufficient revenue and our growth prospects, financial condition and results of operations could be harmed.

Our MR Image-Guided radiation therapy system, MRIdian, may never gain significant acceptance in the marketplace and, therefore, may never generate substantial revenue or allow us to achieve or maintain profitability. Widespread adoption of MR Image-Guided radiation therapy depends on many factors, including: acceptance by clinicians that MR Image-Guided radiation therapy is clinically-effective and cost-effective in treating a wide range of cancers; demand by patients for MR Image-Guided treatment; successful education of clinicians on the various aspects of this therapeutic approach; and coverage and adequate reimbursement for procedures performed using MR Image-Guided radiation therapy. If we are not successful in conveying to clinicians and hospitals that MR Image-Guided radiation therapy provides equivalent or superior radiation therapy compared to existing technologies, we may experience reluctance or refusal on the part of clinicians and hospitals to order, and third-party payors to pay for, performing a treatment in which MRIdian is utilized. Our ability to achieve commercial market acceptance for MRIdian or any other future products also depends on the strength of our sales,

marketing and distribution organizations. In addition, our expectations regarding clinical benefits and cost savings from using MRIdian may not be accurate. These hurdles may make it difficult to demonstrate to physicians, hospitals and other healthcare providers that MRIdian is an appropriate option for radiation therapy, and may be both superior to available radiation therapy systems and more cost-effective than alternative technologies.

Furthermore, we may encounter difficulty in gaining inclusion in cancer treatment guidelines and gaining broad market acceptance by healthcare providers, third-party payors and patients. Healthcare providers may have difficulty in obtaining appropriate reimbursement from government and/or third-party payors for cancer treatment, which may negatively impact adoption of MRIdian.

We may not be able to generate sufficient revenue from the commercialization of our MRIdian systems to achieve and maintain profitability.

We rely entirely on the commercialization of MRIdian Linac to generate revenue. During the year ended December 31, 2022, we recognized revenue of $79.3 million from installation or delivery of 16 MRIdian Linac systems, including one upgrade, $22.4 million from service revenue at certain customer sites, and $0.5 million from distribution rights revenue. In order to successfully commercialize MRIdian Linac, we will need to: continue to expand our marketing efforts to develop new relationships and expand existing relationships with customers; continue to expand our commercial footprint via direct sales and distribution network; receive clearance or approval for MRIdian systems in additional countries; achieve and maintain compliance with applicable regulatory requirements; and develop and commercialize new features for MRIdian systems. We cannot assure you that we will be able to achieve or maintain profitability. If we fail to successfully commercialize MRIdian systems, we may never receive a return on the substantial investments in product development, sales and marketing, regulatory compliance, manufacturing and quality assurance that we have made, as well as further investments we intend to make.

In addition, potential customers may decide not to purchase MRIdian systems, or our customers may decide to cancel orders due to changes in treatment offerings, research and product development plans, difficulties in obtaining coverage or reimbursement for MR Image-Guided radiation therapy treatment, complications with facility build-outs, utilization of MR Image-Guided radiation therapy or other cancer treatment methods developed by other parties, lack of financing or the inability to obtain or delay in obtaining a certificate of need from state regulatory agencies or zoning restrictions, all of which are circumstances outside of our control.

In addition, demand for MRIdian systems may not increase as quickly as we predict, and we may be unable to increase our revenue levels as we expect. Even if we succeed in increasing adoption of MRIdian systems by hospitals and other healthcare providers, maintaining and creating relationships with our existing and new customers and developing and commercializing new features for MRIdian systems, we may not be able to generate sufficient revenue to achieve or maintain profitability.

We are an early, commercial-stage company and have a limited history commercializing MRIdian, which may make it difficult to evaluate our current business and predict our future performance.

We are an early, commercial-stage company and have a limited operating history. We commenced operations as a Florida corporation in 2004 and subsequently reincorporated in Delaware in 2007. However, we did not begin commercial operations until 2013. Our limited history commercializing MRIdian may make it difficult to evaluate our current business and predict our future performance. Any assessment as to if or when we may become profitable or predictions about our future success or viability, are subject to significant uncertainty. We have encountered and will continue to encounter risks and difficulties frequently experienced by early, commercial-stage companies in rapidly evolving industries. If we do not address these risks successfully, our business could be harmed.

If MRIdian does not perform as expected, or if we are unable to satisfy customers' demands for additional product features, our reputation, business and results of operations will suffer.

Our success depends on the market's confidence that MRIdian can provide reliable, high-quality MR Image-Guided radiation therapy. At December 31, 2022, there was one MRIdian with Cobalt-60 and 55 MRIdian Linacs installed. In addition, 16 MRIdian Linacs have been delivered to customers that are in varying stages of deployment. Consequently, we have limited data regarding the efficacy or reliability of MRIdian. We believe that our customers are likely to be particularly sensitive to product defects and errors, including functional downtime that limits the number of patients that can be treated using the system or a failure that is costly to repair. We cannot assure that similar product defects or other errors will not occur in the future. This could also include the mistreatment of a patient with MRIdian caused by human error on the part of MRIdian's operators or prescribing physicians or as a result of a machine malfunction. We may be subject to regulatory enforcement action or legal claims arising from any defects or errors that may occur. Any failure of MRIdian to perform as intended could harm our reputation, business and results of operations.

In addition, our customers are technologically well informed and at times have specific demands or requests for additional functionality. If we are unable to meet those demands through the development of new features for MRIdian or future products, or those new features or products do not function at the level that our customers expect, or we are unable to increase patient throughput as expected or we are unable to obtain regulatory clearance or approval of those new features or products, where applicable, our reputation, business and results of operations could be harmed.

The safety and efficacy of MRIdian systems for certain uses is not currently supported by long-term clinical data and may therefore be less safe and effective than initially intended.

To date, we have not been required to complete long-term clinical studies in connection with the sale of MRIdian Linac. If future patient studies or clinical testing do not support our belief that MRIdian Linac offers a more advantageous treatment for a wide variety of cancer types, market acceptance of these systems could fail to increase or could decrease, and our business could be harmed.

If we choose to, or are required to, conduct additional studies, the results of these studies or experience could reduce the rate of coverage and reimbursement by both public and private third-party payors for procedures that are performed with MRIdian Linac, slow the market adoption of our product by physicians, significantly reduce our ability to achieve expected revenues and prevent us from becoming profitable. In addition, if future studies and experience indicate that MRIdian Linac causes unexpected or serious complications or other unforeseen negative effects, we could be subject to mandatory product recalls or suspension or withdrawal of FDA clearance, and our reputation with physicians, patients and healthcare providers may suffer.

There have been instances of patients' severe injury or death due to a variety of factors in treatment with radiation therapy, including operator error, misuse, radiation therapy product or customer system malfunctions, and other factors. Although we have not experienced such instances, if our redundant safety systems do not operate as we expect, or any of these or other causes arose in the use of our products, a MRIdian system could severely injure or kill a patient. This could result in lawsuits, fines or damage to our reputation.

We may be delayed or prevented from implementing our long-term sales strategy if we fail to educate clinicians and patients about the benefits of MRIdian.

In order to increase revenue, we must increase awareness of the range of benefits that we believe MRIdian offers to both existing and potential customers, primarily cancer clinicians. An important part of our sales strategy involves educating and training clinicians to utilize the entire functionality of MRIdian. In addition, we must further educate clinicians about the ability of MRIdian to treat a wide range of cancer types effectively and efficiently. If clinicians are not properly educated about the use of MRIdian for radiation therapy, they may be unwilling or unable to take advantage of the full range of functionality that we believe MRIdian offers, which could have a negative impact on MRIdian sales. Clinicians may decide that certain tumors can be adequately treated using traditional radiation therapy systems, notwithstanding the benefits of MRIdian. We must also succeed in educating customers about the potential for reimbursement for procedures performed using MRIdian. In addition, we need to increase awareness of MRIdian among potential patients, who are increasingly educated about cancer treatment options and therefore impact adoption of new technologies by clinicians. If our efforts to expand sales of MRIdian in the long-term are not successful, our business and results of operations will be harmed.

We may not be able to gain the support of leading hospitals and key opinion leaders, or to publish the results of our clinical trials in peer-reviewed journals, which may make it difficult to establish MRIdian as a standard of care and achieve market acceptance.

Our strategy includes developing relationships with leading hospitals and key opinion leaders in our industry. If these hospitals and key industry thought leaders determine that MRIdian is not clinically effective or that alternative technologies are more effective, or if we encounter difficulty promoting adoption or establishing MRIdian as a standard of care, our ability to achieve market acceptance of MRIdian could be significantly limited.

We believe that publication of scientific and medical results in peer-reviewed journals and presentation of data at leading conferences are critical to the broad adoption of MRIdian. Publication in leading medical journals is subject to a peer-review process, and peer reviewers may not consider the results of studies involving MRIdian sufficiently novel or worthy of publication.

We have limited experience in marketing and selling MRIdian, and if we are unable to adequately address our customers' needs, it could negatively impact sales and market acceptance of MRIdian and we may never generate sufficient revenue to achieve or sustain profitability.

We have limited experience in marketing and selling MRIdian. We have only been selling MRIdian since 2013 and our devices have only been used to treat patients since early 2014. We have one MRIdian with Cobalt-60 and 55 MRIdian Linacs installed at December 31, 2022. In addition, 16 MRIdian Linacs have been delivered to customers that are in

varying stages of deployment. MRIdian is a new technology in the radiation therapy systems sector and our future sales will largely depend on our ability to increase our sales and marketing efforts and adequately address our customers' needs. We believe it is necessary to maintain a sales force that includes sales representatives with specific technical backgrounds that can address those needs as part of the sales cycle. Competition for these types of employees is intense and we may not be able to attract and retain sufficient personnel to maintain an effective sales and marketing force. If we are unable to adequately address our customers' needs, it could negatively impact sales and market acceptance of MRIdian and we may never generate sufficient revenue to achieve or sustain profitability.

The long sales cycle and low unit volume sales of MRIdian, as well as other factors, may contribute to substantial fluctuations in our operating results and stock price and make it difficult to compare our results of operations to prior periods and predict future financial results.

Because of the relatively small number of systems we expect to install in any period, each installation of a MRIdian may represent a significant percentage of our revenue for a particular period. Additionally, customer site construction, certificate of need and additional zoning and licensing permits are often required in connection with the sale of a MRIdian, any of which may further delay the installation process. When we are responsible for installing a system, we recognize installation revenue over the period of installation as the installation services are performed and control is transferred to the customer. When a qualified third party is responsible for the installation, revenue recognition occurs when the title and risk of loss is transferred in accordance with the customer contract. If we don't install or transfer title when anticipated, our operating results may vary significantly from our expectations. We have had experiences with customers postponing installation of MRIdian systems due to delays in facility build-outs, which are often lengthy and costly processes for our existing and potential customers. In addition, we have experienced delays in our installations due to concerns regarding the COVID-19 pandemic. If our customers delay or cancel purchases, we may be required to modify or terminate contractual arrangements with our suppliers, which may result in the loss of deposits. Due to future fluctuations in revenue and costs, as well as other potential fluctuations, you should not rely upon our operating results in any particular period as an indication of future performance. In addition to the other risks described, the following factors may also contribute to these fluctuations:

- disruptions in the supply or changes in the costs of raw materials, labor, product components, or transportation services as a result of inflation;
- delays in business operations and installation caused by factors related to the COVID-19 pandemic and its follow-on effects;
- timing of when we are able to recognize revenue associated with sales of MRIdian;
- actions relating to regulatory matters, including regulatory requirements in some states for a certificate of need prior to the installation of a MRIdian;
- delays in shipment due to, for example, unanticipated construction delays at customer locations where MRIdian is to be installed, labor disturbances or natural disasters;
- delays in our manufacturing processes or unexpected manufacturing difficulties;
- timing of the announcements of contract executions or other customer and commercial developments;
- timing of the announcement, introduction and delivery of new products or product features by us and by our competitors;
- timing and level of expenditures associated with expansion of sales and marketing activities and our overall operations;
- fluctuations in our gross margins and the factors that contribute to such fluctuations, as described in "Management's Discussion and Analysis of Financial Condition and Results of Operations" elsewhere in this Annual Report;
- our ability to effectively execute on our strategic and operating plans;
- the extent to which MRIdian gains market acceptance and the timing of customer demand for MRIdian;
- our ability to protect our proprietary rights and defend against third-party challenges; and
- changes in third-party coverage and reimbursement, government regulation or in a customer's ability to obtain financing.

These factors are difficult to forecast and may contribute to fluctuations in our reported revenue and results of operations and variation from our expectations, particularly during the periods in which our sales volume is low. Any fluctuations in our financial results may cause volatility in our stock price.

Each MRIdian is a major capital equipment item and is subject to a lengthy sales cycle. The time from initial customer contact to execution of a contract can take 18 to 24 months or more. Following execution of a contract, upon project commencement, it generally takes nine to 15 months for a customer to customize an existing facility or construct a new

vault. During this time, facilities support and transitioning, as well as permitting, are typically required, which can take several months. The time required to customize an existing facility prior to installation, including modifications of a standard vault to accommodate an MRI, is typically currently three to six months. If a customer does not have an existing vault available, it may take longer to construct a new vault. In some cases, customers may request installation for a date later in the future to meet their own clinical or business requirements. Upon the commencement of installation at a customer's facility, it typically takes approximately 45 to 60 days to complete the installation and on-site testing of the system, including the completion of acceptance test procedures. If a small number of customers defer installation of a MRIdian for even a short period, recognition of a significant amount of revenue may be deferred to a subsequent period based on the terms of the executed contract. Because our operating costs are relatively fixed, our inability to recognize revenue in a particular period may impact our profitability in that period. The inability to recognize revenue in a particular period may also make it difficult to compare our operating results with prior periods. The price of a MRIdian requires a portion of our target customers to obtain outside financing before committing to purchase a MRIdian. This financing may be difficult for our customers to obtain in any given period, if at all. The requirement of site-specific modifications or construction may also delay adoption or overall demand. In addition, while we believe that our backlog of orders provides a better measure at any particular point in time of the long-term performance prospects of our business than our operating results for a particular period, investors may attribute significant weight to our operating results for a particular period, which may be volatile and as a result, cause fluctuations in our stock price.

A large portion of our revenue in any given reporting period may be derived from a small number of contracts.

Given that a significant portion of the purchase price for MRIdian will generally be recognized as revenue in a single reporting period, we expect a small number of contracts in any given reporting period to account for a substantial portion of our revenue. Any decrease in revenue from these contracts could harm our operating results. Accordingly, our revenue and results of operations may vary from period to period. We are also subject to credit risk associated with the concentration of our accounts receivable from our customers. If one or more of our customers at any given time were either to terminate their contracts with us, cease doing business with us or fail to pay us on a timely basis, our business, financial condition and results of operations could be harmed.

The payment structure we use in our customer arrangements may lead to fluctuations in operating cash flows in a given period.

While our customers typically provide a deposit upon entering into an order contract with us, the substantial majority of the payment owed for a MRIdian is not due until the time of shipment of a MRIdian or following final acceptance by the customer upon installation. If we miss targeted shipments or our customers do not actively work towards completing installation, our receipt of payments and our operating cash flows could be impacted. In addition, if customers do not adhere to our payment terms, our operating cash flows could be impacted in any given period. Due to these fluctuations in operating cash flows and other potential fluctuations, you should not rely upon our operating results in any particular period as an indication of future performance.

Amounts included in backlog may not result in actual revenue and are an uncertain indicator of our future earnings.

We define backlog as the accumulation of all orders for which revenue has not been recognized and we consider valid. The determination of backlog includes, among other factors, our subjective judgment about the likelihood of an order becoming revenue and the regulatory approval required in the customer's jurisdiction, if any. Our judgments in this area have been, and in the future, may be, incorrect and we cannot assure you that, for any order included in backlog, we will recognize revenue with respect to it. In addition, orders can be delayed for a number of reasons, many of which are beyond our control, including supplier delays, which may cause delays in our manufacturing process, customer delays in commencing or completing construction of its facility, delays in obtaining zoning or other approvals, delays in obtaining financing and delays associated with the ongoing COVID-19 pandemic. We may not be aware of these delays affecting our suppliers and customers and as a result may not consider them when evaluating the contemporaneous effect on backlog. Moreover, orders generally do not have firm dates by when a customer must take delivery or accept our systems, and certain customers may not provide a deposit or letter of credit with the contract, either of which could allow a customer greater flexibility to delay the order without cancelling the contract. Further, our backlog could be reduced due to cancellation of orders by customers. Should a cancellation occur, our backlog and anticipated revenue would be reduced unless we were able to replace it. Reductions in our backlog could negatively impact our future results of operations or the price of our common stock.

We evaluate our backlog at least quarterly to determine if the orders continue to meet our criteria for inclusion in backlog. We may adjust our reported backlog to account for any changes in: customer or distributor plans or financial conditions; the customer's or distributor's continued intent and ability to fulfill the order contract; regulatory requirements; the status of regulatory approval required in the customer's jurisdiction (or other factors); or due to changes in our judgment about the likelihood of completing an order contract. Because revenue will not be recognized until we have fulfilled our

obligations to a customer, there may be a significant amount of time from signing a contract with a customer or shipping a system and revenue recognition. We cannot assure you that our backlog will result in revenue on a timely basis or at all, or that any cancelled contracts will be replaced.

Our ability to achieve profitability depends substantially on increasing our gross margins by standardizing the selling price, reducing costs of MRIdian and improving our economies of scale, which we may not be able to achieve.

We are not, and never have been, profitable. The MRIdian purchase contracts we have entered into to date have been at a range of selling prices. Generally, earlier contracts have been at lower prices and more recent contracts have been at higher prices. Our ability to enter into contracts at higher selling prices depends on a number of factors including:

- our ability to achieve commercial market acceptance for our system;
- the pricing of competitors' systems;
- availability of coverage and adequate reimbursement by commercial and government payors; and
- our ability to manufacture and install our systems in a timely and cost-effective manner.

We bear the risk of warranty claims on all products we supply, including equipment and component parts manufactured by third parties. We cannot assure you that we will be successful in claiming recovery under any warranty or indemnity provided to us by our suppliers or vendors in the event of a successful warranty claim against us by a customer or that any recovery from the vendor or supplier would be adequate. In addition, warranty claims brought by our customers related to third-party components may arise after our ability to bring corresponding warranty claims against the suppliers expires, which could result in additional costs to us. There is a risk that warranty claims made against us will exceed our warranty reserve and our business, financial condition and results of operations could be harmed.

Our customer contracts provide that our customers commit to purchase a MRIdian system for a fixed price, and a MRIdian system will generally not be delivered for nine to 15 months. In some circumstances, delivery can be postponed several months due to customer delays related to construction, vault preparation or concurrent facility expansion, and the cost of product supplies may increase significantly in the intervening time period. In addition, inflation may generally reduce the real value of the purchase price payable upon the achievement of future progress payment milestones. Either of these occurrences could cause our gross margins to decline or cause us to lose money on the sale of a MRIdian.

Moreover, our gross margins may decline in a given period due in part to significant replacement rates for components, resulting in increased warranty expense, negative profit margins on service contracts and customer dissatisfaction. If we are unable to reduce our product costs and improve or maintain quality and reliability, our gross margin may be negatively impacted. Additionally, we may face increased demands for compensation from customers who are not satisfied with the quality and reliability of MRIdian, which could increase our service costs or require us to issue credits against future service payments and negatively impact future product sales. For example, we may have to extend a warranty period due to our failure to meet up-time requirements. We continually work to reduce the cost of our MRIdian product; however, we may be unable to reduce our product cost as quickly as we anticipate and, in some instances, may experience increases in costs from our suppliers.

Even if we are able to implement cost reduction and quality improvement efforts successfully, our service operations may remain unprofitable given the relatively small size and geographic dispersion of our installed base, which prevents us from achieving significant economies of scale for the provision of services. If we are unable to achieve increasingly higher gross margins on our MRIdian systems, we may never become profitable.

We may not be able to develop new products or enhance the capabilities of MRIdian to keep pace with our industry's rapidly changing technology and customer requirements.

Our industry is characterized by rapid technological changes, new product introductions and enhancements and evolving industry standards. Our business prospects depend on our ability to develop new products and applications for our technology in new markets that develop as a result of technological and scientific advances, while improving the performance, cost-effectiveness and efficiency of MRIdian. New technologies, techniques or products could emerge that might offer better combinations of price and performance than MRIdian systems. The market for radiation therapy treatment products is characterized by rapid innovation and advancement in technology. It is important that we anticipate changes in technology and market demand, as well as physician, hospital and healthcare provider practices to successfully develop, obtain clearance or approval, if required, and successfully introduce new, enhanced and competitive technologies to meet our prospective customers' needs on a timely and cost-effective basis. Nevertheless, we must carefully manage our introduction of new products. If potential customers believe that new products will offer enhanced features or be sold for a more attractive price, they may delay purchases until they are available. We may also have excess or obsolete inventory as we transition to new products, and we have no experience in managing product transitions. If we do not successfully

innovate and introduce new technology into our anticipated product lines, or effectively manage the transitions of our technology to new product offerings, our business, financial condition and results of operations could be harmed.

We face competition from numerous companies, many of whom have greater resources than we do or offer alternative technologies at lower prices than our MRIdian systems, which may make it more difficult for us to achieve significant market penetration and profitability.

The market for radiation therapy equipment is characterized by intense competition and pricing pressure. In particular, we compete with a number of existing therapy equipment companies, including Elekta AB, Siemens Healthineers AG through its Varian Medical Systems division, and Accuray Incorporated. Many of these competitors are large, well-capitalized companies with significantly greater market share and resources than we have. As a result, these companies may be better positioned than we are to spend more aggressively on marketing, sales, intellectual property and other product initiatives and research and development activities. In addition, we may compete with certain MRI-linear accelerator research projects that are currently in development and may be commercialized.

Existing technologies may offer certain advantages compared to the MRI technology used by our MRIdian system. For example, computed tomography ("CT") is known to hold certain potential advantages over MRI technology for use in radiation therapy. Diagnostic CT is currently the most widely adopted imaging modality for treatment planning, and can be used to directly measure the electron density of patient tissues, which enables more accurate dose computation. In addition, CT imaging provides superior imaging of bones and boney anatomy than MRI, which is advantageous when imaging those structures for planning and alignment for treatment. Finally, CT is a less expensive technology than MRI and might be preferred by customers seeking a lower cost solution.

Our current competitors or other potential competitors may develop new products at any time or may receive approval or clearance in new jurisdictions. In addition, competitors may be able to respond more quickly and effectively than we can to new or changing opportunities, technologies, standards or customer requirements. If we are unable to develop products that compete effectively against the products of existing or future competitors, our future revenue could be negatively impacted. Some of our competitors may compete by changing their pricing model or by lowering the price of their therapy systems. If these competitors' pricing techniques are effective, it could result in downward pressure on the price of all therapy systems. If we are unable to maintain or increase our selling prices in the face of competition, we may not improve our gross margins.

In addition to the competition that we face from technologies performing similar functions to MRIdian, competition also exists for the limited capital expenditure budgets of our customers. A potential purchaser may be forced to choose between two items of capital equipment. Our ability to compete may also be negatively impacted when purchase decisions are based largely upon price, because MRIdian is a premium-priced system relative to other capital expenditures and alternative radiation therapy technologies. In certain circumstances, a purchaser may decide that an alternative radiation therapy system priced below MRIdian may be sufficient for its patient population given the relative upfront cost savings.

Negative press regarding MR Image-Guided radiation therapy for the treatment of cancer could harm our business.

The comparative efficacy and overall benefits of MR Image-Guided radiation therapy are not yet well understood, particularly with respect to certain types of cancer. These types of reports could negatively impact the market's acceptance of MR Image-Guided radiation therapy, and therefore our ability to generate revenue could be negatively impacted.

We may acquire other businesses, form joint ventures or make investments in other companies or technologies that could negatively affect our operating results, dilute our stockholders' ownership, increase our debt or cause us to incur significant expense.

We may pursue acquisitions of businesses and assets. We also may pursue strategic alliances and joint ventures that leverage our proprietary technology and industry experience to expand our offerings or distribution. We have no experience with acquiring other companies and limited experience with forming strategic partnerships. We may not be able to find suitable partners or acquisition candidates, and we may not be able to complete such transactions on favorable terms, if at all. If we make any acquisitions, we may not be able to integrate these acquisitions successfully into our existing business, and we could assume unknown or contingent liabilities. Any future acquisitions also could result in the incurrence of debt, contingent liabilities or future write-offs of intangible assets or goodwill, any of which could have a negative impact on our cash flows, financial condition and results of operations. Integration of an acquired company also may disrupt ongoing operations and require management resources that we would otherwise focus on developing our existing business. We may experience losses related to investments in other companies, which could harm our financial condition and results of operations. We may not realize the anticipated benefits of any acquisition, strategic alliance or joint venture.

Foreign acquisitions involve unique risks in addition to those mentioned above, including those related to integration of operations across different cultures and languages, currency risks and the particular economic, political and regulatory risks associated with specific countries.

To finance any acquisitions or joint ventures, we may choose to issue shares of common stock as consideration, which could dilute the ownership of our stockholders. Additional funds may not be available on terms that are favorable to us, or at all. If the price of our common stock is low or volatile, we may not be able to acquire other companies or fund a joint venture project using our stock as consideration.

Risks Related to Our Reliance on Third Parties

We depend on third-party distributors to market and distribute MRIdian in international markets.

We expect a significant amount of our revenue to come from international sales and we depend on a number of distributors for sales in certain international markets. Our distributors may not be able to successfully market and sell MRIdian, including as a result of concerns regarding the COVID-19 pandemic, and may not devote sufficient time and resources to support the marketing and selling efforts that enable the product to develop, achieve or sustain market acceptance. In some jurisdictions, we rely on our distributors to manage the regulatory process, and we are dependent on their ability to do so effectively. In addition, if a dispute arises with a distributor or if a distributor is terminated by us or goes out of business, it may take time to locate an alternative distributor, to seek appropriate regulatory approvals and to train that distributor's personnel to market MRIdian; our ability to sell and service MRIdian in the region formerly serviced by the terminated distributor could be harmed. Any of our distributors could become insolvent and we have distributors who have previously become unable to pay amounts owed to us when due. Further, we may have distributors in the future who will become unable to pay amounts owed to us when due. Any of these factors could reduce or delay our ability to recognize revenue and collect cash from affected international markets, increase our costs in those markets or damage our reputation. In addition, if we are unable to attract additional international distributors, our international revenue may not grow.

We rely on a limited number of third-party suppliers and, in some cases, sole suppliers, for the majority of our components, subassemblies and materials and may not be able to find replacements or immediately transition to alternative suppliers.

We rely on a number of suppliers, including several sole suppliers such as Jastec, Siemens AG, Norman Noble, Inc. and Tesla Engineering Limited, for components of MRIdian. For us to be successful, our suppliers must be able to provide us with products and components in substantial quantities, in compliance with regulatory requirements, in accordance with agreed upon specifications, at acceptable costs and on a timely basis. We have experienced and may in the future experience delays in obtaining components and materials from suppliers, including as a result of concerns regarding the COVID-19 pandemic, which could impede our ability to manufacture, assemble and install MRIdian on our expected timeline, which could result in order cancellations or contractual penalties.

If we are required to transition to new third-party suppliers for certain components of MRIdian, we believe that there are only a few other manufacturers that are currently capable of supplying the necessary components. In addition, the use of components or materials furnished by these alternative suppliers could require us to alter our operations. Furthermore, if we are required to change the manufacturer of a critical component of MRIdian, we will be required to verify that the new manufacturer maintains facilities, procedures and operations that comply with our quality and applicable regulatory requirements, which could further impede our ability to manufacture MRIdian in a timely manner. Transitioning to a new supplier could be time-consuming and expensive, may result in interruptions in our operations and product delivery, could affect the performance specifications of MRIdian or could require that we modify the design of MRIdian. If the change in manufacturer results in a significant change to MRIdian, a new 510(k) clearance from the FDA or similar international regulatory authorization may be necessary, which could cause substantial delays. The occurrence of any of these events could harm our ability to meet the demand for MRIdian in a timely manner or cost-effectively.

An interruption in our commercial operations could occur if we encounter delays or difficulties in securing these components and materials and we cannot assure you that we will be able to secure alternative equipment and materials we require for MRIdian. Any such interruption could harm our reputation, business, financial condition and results of operations.

In addition, we are in early stages of developing suppliers for components that are specific to MRIdian Linac. The inability of these suppliers to produce reliable components and to sufficiently scale up manufacturing could harm our ability to install MRIdian Linac systems in a timely or cost-effective manner.

Failures by our third-party distributors to deliver or install MRIdian properly and on time could harm our reputation.

We rely on arrangements with third-party distributors for sales and installation of MRIdian in certain international markets. As a result of our reliance on third-party distributors, we may be subject to disruptions and increased costs due to factors beyond our control, including labor shortages and/or strikes, third-party error, concerns regarding the COVID-19 pandemic and other issues. If the services of any of these distributors become unsatisfactory, including their failure to properly install MRIdian, we may experience delays in meeting our customers' product demands and we may not be able to find a suitable replacement on a timely basis or on commercially reasonable terms. Any failure to deliver, install or service products in a timely manner may damage our reputation and could cause us to lose current or potential customers.

We rely on third parties to store our inventory and to perform spare parts shipping and other logistics functions on our behalf. A failure or disruption with our logistics providers could harm our business.

Customer service is a critical element of our sales strategy. Third-party logistics providers store most of our spare parts inventory in depots around the world and perform a significant portion of our spare parts logistics and shipping activities. If any of our logistics providers suffers an interruption in its business or experiences delays, disruptions or quality control problems in its operations or we have to change and qualify alternative logistics providers for our spare parts, shipments of spare parts to our customers may be delayed and our reputation, business, financial condition and results of operations could be negatively harmed.

If third-party payors do not provide coverage and adequate payment to our customers, it could negatively impact sales of MRIdian.

In the United States, hospitals and other healthcare providers who purchase MRIdian generally rely on third-party payors to reimburse all or part of the costs and fees associated with the treatments performed with our system. Accordingly, sales of MRIdian depend, in part, on whether coverage and adequate payment for radiation oncology services are available to our customers from third-party payors, such as government healthcare insurance programs, including the Medicare and Medicaid programs, and private insurance plans. In general, third-party payors in the United States have become increasingly cost-conscious, which has limited coverage and payment for certain procedures including MR Image-Guided radiation therapy. Third-party payors have also increased utilization controls related to the use of products such as ours by healthcare providers.

Furthermore, there are no uniform coverage and payment policies for MR Image-Guided radiation therapy among third-party payors. Payors continue to review their coverage policies carefully for existing and new therapies and can, without notice, deny coverage for treatments that include the use of MRIdian.

The Medicare program is used as a model by many private payors and other governmental payors to develop their coverage and payment policies for medical services and procedures. Medicare coverage of advanced and conventional radiation therapies using MRIdian currently varies depending upon the geographic location in which the services are provided. The CMS has not adopted national coverage determination for such therapies that would determine coverage nationally. In the absence of a national coverage determination, Medicare Administrative Contractors ("MACs") with jurisdiction over specific geographic regions have the discretion to determine whether and when the use of MR Image-Guided radiation therapy will be considered medically necessary and covered in their respective regions. A number of MACs have adopted or proposed local coverage determinations covering radiation therapy. However, these local coverage determinations do not ensure that coverage will be available for MR Image-Guided radiation therapy for all types of cancer, because the coverage policies may limit coverage to only certain types of cancer.

Even if MR Image-Guided radiation therapy is covered and paid by third-party payors, adverse changes in payors' coverage and payment policies that affect MRIdian could harm our ability to market and sell MRIdian. We cannot be sure that third-party payors will pay our customers for procedures using MRIdian at levels that will enable us to achieve or maintain adequate sales and price levels for MRIdian. Without coverage and adequate payment from third-party payors, the market for MRIdian may be limited.

Third-party payors regularly update payment amounts and, from time to time, revise the methodologies used to determine payment amounts. This includes annual updates to payments to physicians, hospitals and free-standing radiation centers for radiation treatments performed with MRIdian. Generally, because the cost of MRIdian is recovered by the healthcare provider as part of the payment for performing the treatment and not separately paid, these updates could directly affect the demand for MRIdian. An example of payment updates is the Medicare program's updates to hospital and physician payments, which are done on an annual basis using prescribed statutory formulas.

Third-party payors are incentivizing value-based health care by moving away from fee-for-service payment systems to alternative payment models that pay providers based on an episode of care. Under such models, providers are paid a

prospectively determined payment amount per episode and must furnish all medically necessary services to treat the patient. Providers may enter into risk-share arrangements with payors under such models.

Any significant changes, or proposed changes, in payment rates or payment methodologies for radiation therapy or MR Image-Guided therapy specifically, could further increase uncertainty, influence our customers' decisions, reduce demand for MRIdian, cause customers to cancel orders and affect our revenue and harm our business.

Foreign countries also have their own healthcare financing, delivery, and payment systems, which vary significantly by country and region, and we cannot be sure that adequate payments will be made available to customers in those countries with respect to MRIdian under any such foreign health care financing and delivery systems.

Our employees, consultants and commercial partners may engage in misconduct or other improper activities, including insider trading and non-compliance with regulatory standards and requirements.

We are exposed to the risk that our employees, consultants, distributors, and commercial partners may engage in fraudulent or illegal activity. Misconduct by these parties could include intentional, reckless or negligent conduct or disclosure of unauthorized activities that violate the regulations of the FDA and non-U.S. regulators, including those laws requiring the reporting of true, complete and accurate information to such regulators, manufacturing standards, healthcare fraud and abuse laws and regulations in the United States and abroad or laws that require the true, complete and accurate reporting of financial information or data. In particular, sales, marketing and business arrangements in the healthcare industry, including the sale of medical devices, are subject to extensive laws and regulations intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. It is not always possible to identify and deter misconduct by our employees and other third parties, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with these laws or regulations. If any such actions are instituted against us and we are not successful in defending ourselves or asserting our rights, those actions could result in the imposition of significant fines or other sanctions, including the imposition of civil, criminal and administrative penalties, damages, monetary fines, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings and curtailment of operations, any of which could adversely affect our ability to operate our business and our results of operations. Whether or not we are successful in defending against such actions or investigations, we could incur substantial costs, including legal fees, and divert the attention of management in defending ourselves against any of these claims or investigations.

Risks Related to Our Financial Condition and Capital Requirements

We may need to raise additional capital to fund our existing commercial operations, develop and commercialize new features for MRIdian and new products and expand our operations.

Based on our current business plan, we expect that our existing cash and cash equivalents will enable us to conduct our planned operations for at least the next 12 months. If our available cash balances and anticipated cash flow from operations are insufficient to satisfy our liquidity requirements and debt covenants, we may, from time to time, seek to raise capital through a variety of sources, including the public equity market, private equity financing, and/or public or private debt.

We may consider raising additional capital in the future to expand our business, to pursue strategic investments, to take advantage of financing opportunities or for other reasons, including to:

- increase our sales and marketing efforts to increase market adoption of MRIdian and address competitive developments;
- expand our commercial efforts in countries where we have existing operations or to additional geographies;
- provide for supply and inventory costs associated with plans to accommodate potential increases in demand for MRIdian systems;
- fund development and marketing efforts of any future products and technologies or additional features to then-current products;
- acquire, license or invest in new technologies;
- acquire or invest in complementary businesses or assets; and
- finance capital expenditures and general and administrative expenses.

Our present and future funding requirements will depend on many factors, including:

- our ability to address delays impacting our business operations caused by factors related to the COVID-19 pandemic;
- our ability to achieve revenue growth and improve gross margins;
- our rate of progress in establishing coverage and reimbursement arrangements with domestic and international commercial third-party payors and government payors;
- the cost of expanding our operations and offerings, including our sales and marketing efforts;
- our rate of progress in, and cost of the sales and marketing activities associated with, establishing adoption of MRIdian;
- the cost of research and development activities;
- the effect of competing technological and market developments;
- costs related to international expansion; and
- the potential cost of and delays in product development as a result of any regulatory oversight applicable to MRIdian.

The various ways we could raise additional capital carry potential risks. If we raise funds by issuing equity securities, dilution to our stockholders will result. Any equity securities issued also could provide for rights, preferences or privileges senior to those of holders of our common stock. If we raise funds by issuing debt securities, those debt securities would have rights, preferences and privileges senior to those of holders of our common stock. The terms of debt securities issued or borrowings pursuant to a credit agreement could impose significant restrictions on our operations. If we raise funds through collaborations and licensing arrangements, we might be required to relinquish significant rights to certain components contained within MRIdian or grant licenses on terms that are not wholly favorable to us. In addition, uncertain economic conditions may affect our ability to raise capital on favorable terms, or at all.

We have incurred, and will continue to incur, significant costs as a result of operating as a public company and our management expects to continue to devote substantial time to public company compliance programs.

As a public company, we have incurred, and will continue to incur significant legal, accounting and other expenses due to our compliance with regulations and disclosure obligations applicable to us, including compliance with the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), as well as rules implemented by the SEC, and the Nasdaq Stock Market. Stockholder activism, the current political environment and the current high level of government intervention and regulatory reform may lead to substantial new regulations and disclosure obligations, which may lead to additional compliance costs and impact, in ways we cannot currently anticipate, the manner in which we operate our business. Our management and other personnel have devoted, and will continue to devote a substantial amount of time to these compliance programs and monitoring of public company reporting obligations and further regulations and disclosure obligations expected in the future. These rules and regulations will continue to cause us to incur significant legal and financial compliance costs and will make some activities more time-consuming and costly.

To comply with the requirements of being a public company, we may need to undertake various actions, including implementing new internal controls and procedures and hiring additional accounting or internal audit staff. The Sarbanes-Oxley Act requires that we maintain effective disclosure controls and procedures and internal control over financial reporting. We have developed and refined our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in reports under the Securities Exchange Act of 1934 (the "Exchange Act"), is accumulated and communicated to our principal executive and financial officers. Our current controls and any new controls that we develop may become inadequate and weaknesses in our internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls could negatively impact the results of periodic management evaluations regarding the effectiveness of our internal control over financial reporting that we are required to include in our periodic reports we will file with the SEC under Section 404 of the Sarbanes-Oxley Act, harm our operating results, cause us to fail to meet our reporting obligations or result in a restatement of our prior period financial statements. In the event that we are not able to demonstrate compliance with the Sarbanes-Oxley Act, that our internal control over financial reporting is perceived as inadequate or that we are unable to produce timely or accurate financial statements, investors may lose confidence in our operating results and the price of our common stock could decline. In addition, if we are unable to continue to meet these requirements, our common stock may not be able to remain eligible for quotation on The Nasdaq Global Market.

Our credit, security and guaranty agreement with MidCap and SVB, contains operating and financial covenants that may restrict our business and financing activities.

At December 31, 2022, we had $80 million in outstanding debt to MidCap and SVB. Borrowings under credit, security and guaranty agreement with MidCap and SVB (the "Credit Agreement") are secured by substantially all of our personal property, except that the collateral does not include any intellectual property held by the Company, provided, however, the collateral does include all accounts and proceeds of such intellectual property. Our Credit Agreement restricts our ability to, among other things:

- dispose of or sell our assets;
- make material changes in our business;
- merge with or acquire other entities or assets;
- incur additional indebtedness;
- create liens on our assets;
- pay dividends;
- make investments; and
- pay off subordinated indebtedness.

The Credit Agreement also contains financial covenants that require us to maintain a minimum net revenue threshold and a minimum backlog balance. The operating and financial restrictions and covenants in our Credit Agreement, as well as any future financing agreements into which we may enter, may restrict our ability to finance our operations and engage in, expand or otherwise pursue our business activities and strategies. Our ability to comply with these covenants may be affected by events beyond our control, and future breaches of any of these covenants could result in a default under our Credit Agreement. If not waived, future defaults could cause all of the outstanding indebtedness under our Credit Agreement to become immediately due and payable and terminate all commitments to extend further credit.

If we do not have or are unable to generate sufficient cash available to repay our debt obligations when they become due and payable, either upon maturity or in the event of a default, we may not be able to obtain additional debt or equity financing on favorable terms, if at all, which may negatively impact our ability to operate and continue our business as a going concern.

Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations.

At December 31, 2022, we had federal net operating loss carryforwards ("NOLs") of $670.0 million, which begin to expire in the year ending December 31, 2024, and $274.6 million related to state net operating loss carryforwards, which begin to expire in the year ending December 31, 2022. We also had federal research and development tax credit carryforwards of $9.0 million which begin to expire in the year ending December 31, 2027 and state research and development tax credit carryforwards of $5.3 million which carry forward indefinitely. Under Section 382 of the Internal Revenue Code of 1986, as amended (the "Code") a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its NOLs to offset future taxable income. We believe we have experienced three ownership changes which had a corresponding limitation of tax attributes. Future owner or equity changes, including changes that may be outside of our control, could result in additional limitations on net operating loss and credit carryforwards. Our NOLs may also be limited under similar provisions of state law. We have recorded a full valuation allowance related to our NOLs and other deferred tax assets due to the uncertainty of the ultimate realization of the future tax benefits of such assets.

Risks related to the current global economic environment could delay or prevent our customers from obtaining financing to purchase MRIdian and implement the required facilities, which could harm our business, financial condition and results of operations.

The state of the global economy continues to be uncertain. The current global economic conditions and uncertain credit markets and concerns regarding the availability of credit pose a risk that could impact customer demand for MRIdian, as well as our ability to manage normal commercial relationships with our customers, suppliers and creditors, including financial institutions. If the current global economic environment deteriorates, including as a result of concerns regarding the COVID-19 pandemic, inflation, interest rates, political unrest or other factors, our business could be negatively affected.

Risks Related to Administrative, Organizational and Commercial Operations and Growth

We may be unable to manage our future growth effectively, which could make it difficult to execute our business strategy.

We anticipate growth in our business operations. This future growth could create a strain on our organizational, administrative and operational infrastructure, including manufacturing operations, supply chain, quality control, technical support and customer service, sales force management and general and financial administration. We may not be able to maintain the quality of or installation timelines of MRIdian or satisfy customer demand as it grows. Our ability to manage our growth properly will require us to continue to improve our operational, financial and management controls, as well as our reporting systems and procedures. We may implement new enterprise software systems in a number of areas affecting a broad range of business processes and functional areas. The time and resources required to implement these new systems is uncertain and failure to complete this in a timely and efficient manner could harm our business.

If we are unable to support demand for MRIdian and our future products, including ensuring that we have adequate resources to meet increased demand, or we are unable to successfully manage the evolution of our MR Image-Guided radiation technology, our business could be harmed.

As our commercial operations and sales volume grow, we will need to continue to increase our workflow capacity for manufacturing, customer service, billing and general process improvements and expand our internal quality assurance program, among other things. We will also need to purchase additional equipment, some of which can take several months or more to procure, set up and validate, and increase our manufacturing, maintenance, software and computing capacity to meet increased demand. We cannot assure you that any of these increases in scale, expansion of personnel, purchase of equipment or process enhancements will be successfully implemented.

The loss of or our inability to attract and retain key personnel, including highly skilled executives, scientists and salespeople, could negatively impact our business.

The loss or incapacity of existing members of our executive management team could negatively impact our operations if we experience difficulties in hiring qualified successors. Our executive officers have employment agreements; however, the existence of an employment agreement does not guarantee the retention of the executive officer for any period of time.

Our commercial, manufacturing and research and development programs and operations depend on our ability to attract and retain highly skilled engineers, scientists and salespeople. We may not be able to attract or retain qualified personnel in the future due to the competition for qualified personnel among medical device businesses, including in California, Colorado and Ohio. We also face competition from universities and public and private research institutions in recruiting and retaining highly qualified scientific personnel. Recruiting and retention difficulties can limit our ability to support our commercial, manufacturing and research and development programs. All of our employees are at-will, which means that either we or the employee may terminate his or her employment at any time.

We have a limited history of manufacturing, assembling and installing MRIdian in commercial quantities and may encounter related problems or delays that could result in lost revenue.

The pre-installation manufacturing processes for MRIdian include sourcing components from various third-party suppliers, subassembly, assembly, system integration and testing. We must manufacture and assemble MRIdian in compliance with regulatory requirements and at an acceptable cost in order to achieve profitability. We have only a limited history of manufacturing, assembling and installing MRIdian and, as a result, we may have difficulty manufacturing, assembling and installing MRIdian in sufficient quantities in a timely manner. To manage our manufacturing and operations with our suppliers, we forecast anticipated product orders and material requirements to predict our inventory needs up to 18 months in advance and enter into purchase orders on the basis of these requirements. Our limited manufacturing history may not provide us with sufficient data to accurately predict future component demand and to anticipate our costs effectively.

Likewise, we have experienced and may in the future experience delays in the assembly and installation of MRIdian at customer sites on our expected timeline associated with contractor timing delays, which could result in order cancellations or contractual penalties. For example, one of our end customers has informed us that they believe we are late on delivery of one system and that we will be subject to penalties as a result. While we have disputed that claim, there can be no assurance that we will be successful, and penalties could adversely affect our results of operations. In another instance, one of our end customers experienced flooding at its site on two occasions, which has delayed our ability to complete installation and which may adversely affect our results of operations.

Alternatively, delays or postponements of scheduled customer installations could lead to excess inventory due to our limited flexibility to postpone or delay component shipments from suppliers. Accordingly, we may encounter difficulties in production of MRIdian, including problems with quality control and assurance, component supply shortages or surpluses, increased costs, shortages of qualified personnel and difficulties associated with compliance with local, state, federal and

foreign regulatory requirements. In addition, if we are unable to maintain larger-scale manufacturing capabilities, our ability to generate revenue will also be limited and our reputation could be harmed. If we cannot achieve the required level and quality of production, we may need to make changes in our supply chain or enter into licensing and other arrangements with third parties who possess sufficient manufacturing facilities and capabilities in compliance with regulatory requirements. Even if we outsource necessary production or enter into licensing or other third-party arrangements, the associated cost could reduce our gross margin and harm our financial condition and results of operations.

If we were sued for product liability or professional liability, we could face substantial liabilities that exceed our resources.

The marketing, sale and use of MRIdian could lead to the filing of product liability claims were someone to allege that MRIdian did not effectively treat the conditions its users were intending to target, caused serious medical conditions or injury, or failed to perform as designed. We may also be subject to liability for errors in, a misunderstanding of or inappropriate reliance upon the information we provide in the ordinary course of our business activities, such as customer support or operating instructions. A product liability claim could result in substantial damages and be costly and time-consuming for us to defend.

We maintain product liability insurance, but the amounts of insurance coverage may not fully protect us from the financial impact of defending against product liability claims (and we have significant deductibles). Any product liability claim brought against us, with or without merit, could increase our insurance rates or prevent us from securing insurance coverage in the future. Additionally, any product liability lawsuit could lead to regulatory investigations, product recalls or withdrawals, damage our reputation or cause current vendors, suppliers and customers to terminate existing agreements and potential customers and partners to seek other suppliers of radiation therapy systems, any of which could negatively impact our results of operations.

International tariffs, including tariffs applied to our MRIdian systems sold into China, could materially and adversely affect our business operations and financial condition.

Recent U.S. government actions are imposing greater restrictions and economic disincentives on international trade impacting imports and exports. The U.S. government has adopted changes, and intends to adopt further changes, to trade policy and in some cases, to renegotiate, or potentially terminate, certain existing bilateral or multi-lateral trade agreements. It has initiated the imposition of additional tariffs on certain foreign goods, including radiation therapy equipment. Additionally, the government may also propose export rule changes that lower the percentage of permissible U.S. content for certain non-U.S. manufactured goods being sold to certain specified companies, further restrict the sale of foreign-made goods that are based on U.S. technology, and regulate the use of any U.S. origin content in certain manufacturing equipment used to produce goods for certain companies.

Changes in U.S. trade policy could result in one or more U.S. trading partners adopting responsive trade policy making it more difficult or costly for us to export our products to those countries. As indicated above, these measures could also result in increased costs for goods imported into the U.S. This in turn could require us to increase prices to our customers, which may reduce demand, or, if we are unable to increase prices, result in lowering our margin on goods and services sold. To the extent that trade tariffs and other restrictions imposed by the U.S. increase the price of radiation therapy equipment and related parts imported into the U.S., the cost of our materials may be adversely affected and the demand from customers for products and services may be diminished, which could adversely affect our revenues.

We cannot predict future trade policy, the terms of any renegotiated trade agreements or additional imposed tariffs and their impact on our business. The adoption and expansion of trade restrictions, the occurrence of a trade war, or other governmental action related to tariffs or trade agreements or policies have the potential to adversely impact demand for our products, our costs, our customers, our suppliers, and the U.S. economy, which in turn could adversely impact our business, financial condition and results of operations.

Changes in U.S. social, political, regulatory and economic conditions or in laws and policies governing foreign trade, manufacturing, development and investment in the territories and countries where we currently develop and sell products, and any negative sentiments towards the United States as a result of such changes, could adversely affect our business. In addition, negative sentiments towards the United States among non-U.S. customers and among non-U.S. employees or prospective employees could adversely affect sales or hiring and retention, respectively.

The results of the United Kingdom's withdrawal from the EU may have a negative effect on global economic conditions, financial markets and our business.

The U.K. held a referendum on June 23, 2016 in which a majority voted for the U.K.'s withdrawal from the European Union, which is commonly referred to as Brexit. The U.K. officially withdrew from the EU on January 31, 2020, although it continued to participate in the European Union during a transition period through December 31, 2020. The effects of

Brexit and the perceptions as to the impact of the withdrawal of the U.K. from the European Union may adversely affect business activity and economic and market conditions in the U.K., the Eurozone, and globally and could contribute to instability in global financial and foreign exchange markets, including volatility in the value of the pound sterling and the euro. In addition, Brexit could lead to additional political, legal and economic instability in the European Union. Any of these effects of Brexit could adversely affect the value of our assets in the U.K., as well as our business, financial condition, results of operations and cash flows.

We face risks associated with our international business.

In addition to our marketing and sales of MRIdian in the United States, we also market MRIdian in other regions, with contracts signed with customers and distributors in those regions. Our international business operations are subject to a variety of risks, including:

- delays impacting our business operations caused by concerns in connection with the COVID-19 pandemic;
- difficulties in staffing and managing foreign and geographically dispersed operations;
- effective compliance with various U.S. and international laws, including export control laws and the U.S. Foreign Corrupt Practices Act of 1977 (the "FCPA") and anti-money laundering laws;
- effective compliance with privacy, data protection and information security laws, such as the European Union General Data Protection Regulation ("GDPR") and the Cybersecurity Law of the People’s Republic of China;
- differing regulatory requirements for obtaining clearances or approvals to market MRIdian and future product enhancements for MRIdian;
- economic, political or social instability in foreign countries and regions, including the possible political unrest involving Russia and Ukraine that may impact our business operations in Russia;
- changes and uncertainties relating to foreign rules and regulations that may impact our ability to sell MRIdian, perform services or repatriate profits to the United States;
- tariffs, export or import restrictions, restrictions on remittances abroad, imposition of duties or taxes that limit our ability to move MRIdian out of these countries or interfere with the import of essential materials into these countries;
- limitations on our ability to enter into cost-effective arrangements with distributors of MRIdian, or at all;
- fluctuations in foreign currency exchange rates;
- imposition of limitations on production, sale or export of MRI-guided radiation therapy systems in foreign countries;
- imposition of limitations on or increase of withholding and other taxes on remittances and other payments by foreign subsidiaries or joint ventures;
- differing multiple payor reimbursement regimes, government payors or patient self-pay systems;
- imposition of differing labor laws and standards;
- dependence on, and potential disruptions to, our international supply chain, including as a result of changes in foreign laws and regulations, tariffs, export or import restrictions, political, economic and social instability or otherwise;
- an inability, or reduced ability, to protect our intellectual property, including any effect of compulsory licensing imposed by government action; and
- availability of government subsidies or other incentives that benefit competitors in their local markets that are not available to us.

We expect that we will begin expanding into more markets; however, we cannot assure you that our expansion plans will be realized, or if realized, be successful. We expect each market to have particular regulatory and funding hurdles to overcome and future developments in these markets, including the uncertainty relating to governmental policies and regulations, could harm our business. If we expend significant time and resources on expansion plans that fail or are delayed, our reputation, business and financial condition may be harmed.

Our results may be impacted by changes in foreign currency exchange rates.

Currently, the majority of our international order contracts are denominated in U.S. dollars. We pay certain of our suppliers in a foreign currency under the terms of their supply agreements, and we may pay other suppliers in the future in foreign currency. As a result, an increase in the value of the U.S. dollar relative to foreign currencies could require us to reduce our

selling price or risk making MRIdian less competitive in international markets or could cause our costs to increase. Also, if our international sales increase, we may enter into a greater number of transactions denominated in non-U.S. dollars, which could expose us to foreign currency risks, including changes in currency exchange rates. We do not currently engage in any hedging transactions. If we are unable to address these risks and challenges effectively, our international operations may not be successful, and our business could be harmed.

We could be negatively impacted by violations of applicable anti-corruption laws or violations of our internal policies designed to ensure ethical business practices.

We operate in a number of countries throughout the world, including in countries that do not have as strong a commitment to anti-corruption and ethical behavior that is required by U.S. laws or by corporate policies. We are subject to the risk that we, our U.S. employees or our employees located in other jurisdictions or any third parties such as our sales agents and distributors that we engage to do work on our behalf in foreign countries may take action determined to be in violation of anti-corruption laws in any jurisdiction in which we conduct business, including the FCPA and the Bribery Act of 2010 (the "U.K. Anti-Bribery Act"). In addition, we operate in certain countries in which the government may take an ownership stake in an enterprise and such government ownership may not be readily apparent, thereby increasing potential anti-corruption law violations. Any violation of the FCPA and U.K. Anti-Bribery Act or any similar anti-corruption law or regulation could result in substantial fines, sanctions, civil and/or criminal penalties and curtailment of operations in certain jurisdictions and might harm our business, financial condition or results of operations. In addition, we have internal ethics policies with which we require our employees to comply in order to ensure that our business is conducted in a manner that our management deems appropriate. If these anti-corruption laws or internal policies were to be violated, our reputation and operations could also be substantially harmed. Further, detecting, investigating and resolving actual or alleged violations is expensive and can consume significant time and attention of our senior management.

We are subject to export restrictions and laws affecting trade and investments, and the future sale of our MRIdian system may be further limited or prohibited in the future by a government agency or authority.

As a global company headquartered in the United States, our MRIdian system is subject to U.S. laws and regulations that may limit, restrict or require a license to export (and re-export from other countries) our MRIdian system and related product and technical information due to MRIdian’s use of hazardous materials. We are also subject to the export and import laws of those foreign jurisdictions to which we sell or from which we re-export our MRIdian system. Compliance with these laws and regulations could significantly limit our operations and our sales in the future and failure to comply, even indirectly, could result in a range of penalties, including restrictions on exports of our MRIdian system for a specified time period, or forever, and severe monetary penalties. In certain circumstances, these restrictions may affect our ability to interact with any of our future foreign subsidiaries and otherwise limit our trade with third parties, including suppliers and customers, operating inside and outside the United States. In addition, if we introduce new products, we may need to obtain licenses or approvals from the United States and other governments to ship them into foreign countries. Failure to receive the appropriate approvals may mean that our commercial efforts and expenses related to such efforts may not result in any revenue, which could harm our business.

We depend on our information technology systems, and any failure of these systems could harm our business.

We depend on information technology and telecommunications systems for significant elements of our operations. We have developed proprietary software for the management and operation of MRIdian by our customers. We have installed, and expect to expand, a number of enterprise software systems that affect a broad range of business processes and functional areas, including for example, systems handling human resources, financial controls and reporting, contract management, inventory management, regulatory compliance and other infrastructure operations. In addition to the aforementioned business systems, we intend to extend the capabilities of both our preventative and detective security controls by augmenting the monitoring and alerting functions, the network design and the automatic countermeasure operations of our technical systems. These information technology and telecommunications systems support a variety of functions, including sales and marketing, manufacturing operations, customer service support, billing and reimbursement, research and development activities and general administrative activities.

Information technology and telecommunications systems are vulnerable to damage from a variety of sources, including telecommunications or network failures, malicious human acts and natural disasters. Moreover, despite network security and back-up measures, some of our servers are potentially vulnerable to physical or electronic break-ins, computer viruses and similar disruptive problems. Despite the precautionary measures we have taken to prevent unanticipated problems that could affect our information technology and telecommunications systems, failures or significant downtime of our information technology or telecommunications systems or those used by our third-party service providers could prevent us from providing maintenance and support services to our customers, conducting research and development activities and managing the administrative aspects of our business. Any disruption or loss of information technology or telecommunications systems on which critical aspects of our operations depend could harm our business.

Our operations are vulnerable to interruption or loss due to natural or other disasters, power loss, strikes and other events beyond our control.

We conduct a significant portion of our activities, including administration and data processing, at facilities located in California, Colorado, Ohio and other areas that have experienced major earthquakes, tornadoes and other natural disasters. A major earthquake, tornado or other disaster (such as pandemic outbreaks, a major fire, hurricane, flood, tsunami, volcanic eruption or terrorist attack) affecting our facilities, or those of our suppliers, could significantly disrupt our operations, and delay or prevent product shipment or installation during the time required to repair, rebuild or replace our suppliers' damaged manufacturing facilities; these delays could be lengthy and costly. If any of our suppliers' or customers' facilities are negatively impacted by a disaster, shipments of MRIdian could be delayed. Additionally, customers may delay purchases of MRIdian until operations return to normal. Even if we are able to quickly respond to a disaster, the ongoing effects of the disaster could create some uncertainty in the operations of our business. In addition, our facilities may be subject to a shortage of available electrical power and other energy supplies. Any shortages may increase our costs for power and energy supplies or could result in blackouts, which could disrupt the operations of our affected facilities and harm our business. Further, MRIdian is typically shipped from a limited number of ports, and any disaster, strike or other event blocking shipment from these ports could delay or prevent shipments and harm our business. In addition, concerns about terrorism, the effects of a terrorist attack, political turmoil or an outbreak of epidemic diseases, such as Ebola or influenza, could have a negative effect on our operations, those of our suppliers and customers and the ability to travel, which could harm our business, financial condition and results of operations.

Risks Related to Intellectual Property

Litigation or other proceedings or third-party claims of intellectual property infringement can and are requiring us to spend significant time and money and could prevent us from selling MRIdian or impact our stock price.

There is considerable intellectual property litigation and contested patent disputes in the medical device area. Third parties may assert claims that we are employing their proprietary technology without authorization, including claims from competitors or from non-practicing entities that have no relevant product revenue and against whom our own patent portfolio may have no deterrent effect. As we continue to commercialize MRIdian in its current or an updated form, launch new products and enter new markets, we expect that competitors may claim that MRIdian infringes their intellectual property rights as part of business strategies designed to impede our successful commercialization and entry into new markets. Although we are presently unaware of any basis by which a third-party would be justified in making such claims, in the future, we may receive additional letters or other threats or claims from third parties inviting us to take licenses under, or alleging that we infringe, their patents. Third parties may have obtained, and may in the future obtain, patents under which such third parties may claim that the use of our technologies constitutes patent infringement.

Moreover, we may become party to future adversarial proceedings regarding our patent portfolio or the patents of third parties. Such proceedings could include contested post-grant proceedings such as oppositions, inter partes review, reexamination, interference or derivation proceedings before the U.S. Patent and Trademark Office or foreign patent offices. The legal threshold for initiating litigation or contested proceedings is low, so that even lawsuits or proceedings with a low probability of success might be initiated. Litigation and contested proceedings can also be expensive and time-consuming, and our adversaries in these proceedings may have the ability to dedicate substantially greater resources to prosecuting these legal actions than we can.

We could incur substantial costs and divert the attention of our management and technical personnel in defending ourselves against any of these claims or in any of such proceedings. Any adverse ruling or perception of an adverse ruling in defending ourselves against these claims could have a negative impact on our cash position and stock price. Furthermore, parties making claims against us may be able to obtain injunctive or other relief, which could block our ability to develop, commercialize and sell products, and could result in the award of substantial damages against us. In the event of a successful claim of infringement or misappropriation against us, we may be required to pay damages, obtain one or more licenses from third parties or be prohibited from selling certain products, all of which could have a negative impact on our cash position, business and financial condition.

In addition, we may be unable to obtain these licenses at a reasonable cost, if at all. We could therefore incur substantial costs related to royalty payments for licenses obtained from third parties, which could negatively affect our gross margins. Moreover, we could encounter delays in product introductions while we attempt to develop alternative methods or products. Defense of any lawsuit or adversarial proceeding or failure to obtain any of these licenses on favorable terms could prevent us from commercializing products, and the prohibition of sale of MRIdian or future products could impact our ability to grow and maintain profitability and could harm our business.

If we are unable to adequately protect our proprietary technology or maintain issued patents that are sufficient to protect MRIdian, others could compete against us more directly, which could harm our business, financial condition and results of operations.

Our commercial success will depend in part on our success in obtaining and maintaining issued patents and other intellectual property rights in the United States and elsewhere and protecting our proprietary technology. If we do not adequately protect our intellectual property and proprietary technology, competitors may be able to use our technologies and erode or negate any competitive advantage we may have, which could harm our business and ability to achieve profitability.

We cannot provide any assurances that any of our patents have, or that any of our pending patent applications that mature into issued patents will include, claims with a scope sufficient to protect MRIdian, any additional features we develop for MRIdian or any new products. Other parties may have developed technologies that may be related or competitive to our platform, may have filed or may file patent applications and may have received or may receive patents that overlap or conflict with our patent applications, either by claiming the same methods or devices or by claiming subject matter that could dominate our patent position. The patent positions of medical device companies, including our patent position, involve complex legal and factual questions, and, therefore, the issuance, scope, validity and enforceability of any patent claims that we may obtain cannot be predicted with certainty. Patents, if issued, may be challenged, deemed unenforceable, invalidated or circumvented. U.S. patents and patent applications may also be subject to supplemental examination or contested post-grant proceedings such as inter partes review, reexamination, interference or derivation proceedings before the U.S. Patent and Trademark Office and challenges in district court. Patents may be subjected to opposition, post-grant review or comparable proceedings lodged in various foreign, both national and regional, patent offices. These proceedings could result in either loss of the patent or denial of the patent application or loss or reduction in the scope of one or more of the claims of the patent or patent application. In addition, such proceedings may be costly. Thus, any patents that we may own or exclusively license may not provide any protection against competitors. Furthermore, an adverse decision in an interference proceeding can result in a third-party receiving the patent right sought by us, which in turn could affect our ability to commercialize MRIdian.

Furthermore, though an issued patent is presumed valid and enforceable, its issuance is not conclusive as to its validity or its enforceability and it may not provide us with adequate proprietary protection or competitive advantages against competitors with similar products. Competitors may also be able to design around our patents. Other parties may develop and obtain patent protection for more effective technologies, designs or methods. We may not be able to prevent the unauthorized disclosure or use of our technical knowledge or trade secrets by consultants, agents, distributors, suppliers, vendors, former employees and current employees. The laws of some foreign countries do not protect our proprietary rights to the same extent as the laws of the United States, and we may encounter significant problems in protecting our proprietary rights in these countries. If any of these developments were to occur, they each could have a negative impact on our results of operations and business.

Our ability to enforce our patent rights depends on our ability to detect infringement. It is difficult to detect infringers who do not advertise the components that are used in their products. Moreover, it may be difficult or impossible to obtain evidence of infringement in a competitor's or potential competitor's product. Any litigation to enforce or defend our patent rights, even if we were to prevail, could be costly and time-consuming and would divert the attention of our management and key personnel from our business operations. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded if we were to prevail may not be commercially meaningful.

In addition, proceedings to enforce or defend our patents could put our patents at risk of being invalidated, held unenforceable or interpreted narrowly. Such proceedings could also provoke third parties to assert claims against us, including that some or all of the claims in one or more of our patents are invalid or otherwise unenforceable. If any of our patents covering MRIdian are invalidated or found unenforceable, our financial position and results of operations could be negatively impacted. In addition, if a court found that valid, enforceable patents held by third parties covered MRIdian, our financial position and results of operations could be harmed.

The degree of future protection for our proprietary rights is uncertain, and we cannot ensure that:

- any of our patents, or any of our pending patent applications, if issued, will include claims having a scope sufficient to protect MRIdian or any other products;
- any of our pending patent applications will issue as patents;
- we will be able to successfully commercialize MRIdian on a substantial scale before our relevant patents expire;
- we were the first to make the inventions covered by each of our patents and pending patent applications;
- we were the first to file patent applications for these inventions;

- others will not develop similar or alternative technologies that do not infringe our patents;
- any of our patents will be found to ultimately be valid and enforceable;
- any patents issued to us will provide a basis for an exclusive market for our commercially viable products, will provide us with any competitive advantages or will not be challenged by third parties;
- we will develop additional proprietary technologies or products that are separately patentable; or
- our commercial activities or products will not infringe upon the patents of others.

We rely, in part, upon unpatented trade secrets, unpatented know-how and continuing technological innovation to develop and maintain our competitive position, which we seek to protect, in part, by confidentiality agreements with our employees and our collaborators and consultants. We also have agreements with our employees and selected consultants that obligate them to assign their inventions to us and have non-compete agreements with some, but not all, of our consultants. It is possible that technology relevant to our business will be independently developed by a person that is not a party to such an agreement. Furthermore, if the employees and consultants who are parties to these agreements breach or violate the terms of these agreements, we may not have adequate remedies for any such breach or violation, and we could lose our trade secrets through such breaches or violations. Further, our trade secrets could otherwise become known or be independently discovered by our competitors.

If we are not able to meet the requirements of our license agreement with the University of Florida Research Foundation, Inc., we could lose access to the technologies licensed thereunder and be unable to manufacture, market or sell MRIdian.

We license patents and patent applications from the UFRF, covering our combination of MRI and radiation therapy, and other key technologies, incorporated into MRIdian under a license agreement that requires us to pay royalties to UFRF. In addition, the license agreement obligates us to pursue an agreed development plan and to submit periodic reports and restricts our ability to take actions to defend the licensed patents. The license agreement terminates when the underlying patents expire in 2025, although UFRF has the right to unilaterally terminate the agreement if we do not meet our royalty payment obligations, including minimum royalty payments of $50,000 per quarter, or if we fail to satisfy other development and commercialization obligations related to our utilization of the technology. If UFRF were to terminate the agreement or if we were to otherwise lose the ability to exploit the licensed patents, our competitive advantage could be reduced, we may not be able to find a source to replace the licensed technology and we may be prevented from selling MRIdian. The license agreement reserves to UFRF the initial right to defend or prosecute any claim arising with respect to the licensed technology. If UFRF does not vigorously defend the patents, we may be required to engage in expensive patent litigation to enforce our rights and any competitive advantage we have based on the licensed technology may be hampered. Any of these events could harm our business, financial condition and results of operations.

Changes in U.S. patent laws may limit our ability to obtain, defend or enforce our patents.

Past or future patent reform legislation or precedent could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. For example, the Leahy-Smith America Invents Act (the "Leahy-Smith Act"), includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications are prosecuted and also affect patent litigation. The first to file provisions of the Leahy-Smith Act limit the rights of an inventor to patent an invention if not the first to file an application for patenting that invention, even if such invention was the first invention.

The Leahy-Smith Act also created an administrative tribunal known as the Patent Trial and Appeal Board ("PTAB"), that provides a venue for companies to challenge the validity of a competitor’s patents at a cost that is much lower than district court litigation and on timelines that are much faster. Although it is not clear what, if any, long-term impact the PTAB proceedings will have on the operation of our business, the initial results of patent challenge proceedings before the PTAB since its inception in 2013 have resulted in the invalidation of many U.S. patent claims. The availability of the PTAB as a lower-cost, faster and potentially more potent tribunal for challenging patents could therefore increase the likelihood that our own patents will be challenged, thereby increasing the uncertainties and costs of maintaining and enforcing them. Moreover, if such challenges occur with regard to our UFRF-licensed patents, as indicated above, we have only limited rights to control the defense.

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

In addition to patent protection, we also rely upon copyright and trade secret protection, as well as non-disclosure agreements and invention assignment agreements with our employees, consultants and third parties, to protect our confidential and proprietary information. In addition to contractual measures, we try to protect the confidential nature of our proprietary information using physical and technological security measures. Such measures may not, for example, in

the case of misappropriation of a trade secret by an employee or third party with authorized access, provide adequate protection for our proprietary information. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret can be difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, trade secrets may be independently developed by others in a manner that could prevent legal recourse by us. If any of our confidential or proprietary information, such as our trade secrets, were to be disclosed or misappropriated, or if any such information was independently developed by a competitor, our competitive position could be harmed.

We may not be able to enforce our intellectual property rights throughout the world.

The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. This could make it difficult for us to stop the infringement of our patents, if obtained, or the misappropriation of our other intellectual property rights. For example, many foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third parties. In addition, many countries limit the enforceability of patents against certain third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit. Patent protection must ultimately be sought on a country-by-country basis, which is an expensive and time-consuming process with uncertain outcomes. Accordingly, we may choose not to seek patent protection in certain countries, and we will not have the benefit of patent protection in such countries.

Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate. In addition, changes in the law and legal decisions by courts in the United States and foreign countries may affect our ability to obtain adequate protection for our technology and the enforcement of intellectual property.

Third parties may assert ownership or commercial rights to inventions we develop.

Third parties may, in the future, make claims challenging the inventorship or ownership of our intellectual property. We have written agreements with collaborators that provide for the ownership of intellectual property arising from our collaborations. These agreements provide that we must negotiate certain commercial rights with collaborators with respect to joint inventions or inventions made by our collaborators that arise from the results of the collaboration. In some instances, there may not be adequate written provisions to address clearly the resolution of intellectual property rights that may arise from a collaboration. If we cannot successfully negotiate sufficient ownership and commercial rights to the inventions that result from our use of a third-party collaborator's materials where required, or if disputes otherwise arise with respect to the intellectual property developed with the use of a collaborator's technology, we may be limited in our ability to capitalize on the market potential of these intellectual property rights. In addition, we may face claims by third parties that our agreements with employees, contractors or consultants obligating them to assign intellectual property to us are ineffective or in conflict with prior or competing contractual obligations of assignment, which could result in ownership disputes regarding intellectual property we have developed or will develop and interfere with our ability to capture the commercial value of such intellectual property. Litigation may be necessary to resolve an ownership dispute, and if we are not successful, we may be precluded from using certain intellectual property or may lose our exclusive rights in that intellectual property. Either outcome could harm our business.

Third parties may assert that our employees or consultants have wrongfully used or disclosed confidential information or misappropriated trade secrets.

We employ individuals who were previously employed at universities or other medical device companies, including our competitors or potential competitors. Although we try to ensure that our employees and consultants do not use the proprietary information or know-how of others in their work for us, we may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed intellectual property, including trade secrets or other proprietary information, of a former employer or other third parties. Litigation may be necessary to defend against these claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees.

A network or data security incident may allow unauthorized access to our products, our network or our data and also that of our customers, resulting in disruption of critical information systems, harm to our reputation and creation of additional liability that could adversely impact our financial results.

Increasingly, companies are subject to a wide variety of attacks on their products, networks, and systems on an ongoing basis. In addition to traditional computer "hackers," malicious code (such as viruses and worms), employee theft or misuse, and denial-of-service attacks, sophisticated nation-state and nation-stated supported actors now engage in attacks (including advanced persistent threat intrusions). Despite significant efforts to create security barriers to such threats, it is virtually

impossible to entirely mitigate these risks. Even if we allocate and effectively manage the resources necessary to build and sustain the proper infrastructure in our business technology or in our product design, we could still be subject to, among other things: transaction errors; processing inefficiencies; the loss of customers; business disruptions; the loss of or damage to intellectual property through a security breach; or the inability to comply with applicable laws.

To meet business objectives, we rely on both internal information technology (IT) systems and networks, and those of third parties and their vendors, to process and store sensitive data, including confidential research, business plans, financial information, intellectual property, and personal data that may be subject to legal protection. The extensive information security and cybersecurity threats, which affect companies globally, pose a risk to the security and availability of these IT systems and networks, and the confidentiality, integrity, and availability of our sensitive data. We assess these threats and makes investments to increase internal protection, detection, and response capabilities, and seek to ensure that our third-party providers have required capabilities and controls, to address this risk.

If a breach of data security were to occur at a customer site through one of our products as a result of third-party action, employee error, malfeasance or otherwise, and the confidentiality, integrity or availability of our customers' data, including patient health information (PHI) and personally identifiable information (PII) were disrupted, we could incur significant liability to our customers and to individuals or businesses whose information was being stored by our customers. Our systems may be perceived as less desirable, which could negatively affect our business and damage our reputation. In addition, a network or security breach could result in the loss of customers and make it more challenging to acquire new customers. Because techniques used to obtain unauthorized access to, or to sabotage, systems change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventive measures. In addition, security breaches impacting our network could result in a risk of loss or unauthorized disclosure of customers' data, which, in turn, could lead to litigation, governmental audits and investigations and possible liability, damage our relationships with our existing customers, and have a negative impact on our ability to attract and retain new customers. In addition, the costs associated with the investigation, remediation and potential notification of the breach to customers and counter-parties could be material.

Third parties may attempt to fraudulently induce employees or customers into disclosing sensitive information such as user names, passwords or other information or otherwise compromise the security of our internal networks, electronic systems and/or physical facilities in order to gain access to our data or our customers' data, which could result in significant legal and financial exposure, interruptions or malfunctions in our operations, and, ultimately, harm to our future business prospects and revenue. We may be required to expend significant capital and financial resources to protect against threats such as these, or to alleviate problems caused by breaches in security.

To date, we have not experienced any material impact to the business or operations resulting from information or cybersecurity attacks; however, because of the frequently changing attack techniques, along with the increased volume and sophistication of the attacks, there is the potential that we could be adversely impacted. This impact could result in reputational, competitive, operational, or other business harm as well as financial costs and regulatory action.

We maintain cybersecurity insurance in the event of an information security or cyber incident; however, the coverage may not be sufficient to cover all financial, legal, business, or reputational losses.

Risks Related to Regulatory Matters

MRIdian and our operations are subject to extensive government regulation and oversight both in the United States and abroad, and our failure to comply with applicable requirements could harm our business.

MRIdian is a medical device that is subject to extensive regulation in the United States and elsewhere, including by the FDA and its foreign counterparts. The FDA and foreign regulatory agencies regulate, among other things, with respect to medical devices:

- design, development and manufacturing;
- testing, labeling, content and language of instructions for use and storage;
- clinical trials;
- product safety;
- marketing, sales and distribution;
- premarket clearance and approval;
- record keeping procedures;
- advertising and promotion;
- recalls and field safety corrective actions;
- post-market surveillance, including reporting of deaths or serious injuries and malfunctions that, if they were to recur, could lead to death or serious injury;
- post-market approval studies; and

- product import and export.

The regulations to which we are subject are complex and have tended to become more stringent over time. Regulatory changes could result in restrictions on our ability to carry on or expand our operations, higher than anticipated costs or lower than anticipated sales.

In the United States, before we can market a new medical device, or a new use of, new claim for or significant modification to an existing product, we must first receive either clearance under Section 510(k) of the FDCA or approval of a premarket approval ("PMA"), application from the FDA, unless an exemption applies. In the 510(k) clearance process, the FDA must determine that a proposed device is “substantially equivalent” to a device legally on the market, known as a “predicate” device, in order to clear the proposed device for marketing. To be “substantially equivalent,” the proposed device must have the same intended use as the predicate device, and either have the same technological characteristics as the predicate device or have different technological characteristics and not raise different questions of safety or effectiveness than the predicate device. Clinical data are sometimes required to support substantial equivalence. The PMA process is typically required for devices that are deemed to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices.

Certain modifications made to products cleared through a 510(k) may require a new 510(k) clearance, or possible PMA approval. The 510(k) clearance process can be expensive, lengthy and uncertain. The FDA’s 510(k) clearance process usually takes from three to 12 months, but can last longer. Despite the time, effort and cost, we cannot assure you that any particular device will be approved or cleared by the FDA. Any delay or failure to obtain necessary regulatory approvals could harm our business.

In the United States, we have obtained 510(k) premarket clearance from the FDA to market MRIdian for the provision of stereotactic radiosurgery and precision radiotherapy for lesions, tumors and conditions anywhere in the body where radiation treatment is indicated. An element of our strategy is to continue to upgrade MRIdian to incorporate new software and hardware enhancements. We expect that such upgrades, as well as other future modifications, may require new 510(k) clearance; however, future upgrades may be subject to the substantially more costly, time-consuming and uncertain PMA process. If the FDA requires us to go through a lengthier, more rigorous examination for future products or modifications to existing products than we had expected, product introductions or modifications could be delayed or cancelled, which could cause our sales to decline. In August 2016, we filed for FDA 510(k) clearance for the MRIdian Linac and received FDA clearance in February 2017. In June 2017, we received 510(k) clearance to market RayZR, our high-resolution MLC. In February 2019, we received 510(k) clearance for modifications to the MRIdian Linac system, including image pulse sequencing, changing from four to eight frames per second for imaging during radiation therapy delivery and modifications to the multi-channel radiofrequency system. In December 2021, we received 510(k) clearance for MRIdian A3i, which includes new features focused on enhancing on-table adaptive workflow efficiency and expanding clinical utility.

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

- we may not be able to demonstrate to the FDA’s satisfaction that MRIdian is substantially equivalent to the proposed predicate device or safe and effective for its intended use;
- the data from our pre-clinical studies and clinical trials may be insufficient to support clearance or approval, where required; and
- the manufacturing process or facilities we use may not meet applicable requirements.

In addition, the FDA may change its clearance and approval policies, adopt additional regulations or revise existing regulations, or take other actions, which may prevent or delay approval or clearance of our future products under development or impact our ability to modify our currently cleared product on a timely basis. For example, the FDA issued guidance (“Deciding When to Submit a 510(k) for a Change to an Existing Device” and “Deciding When to Submit a 510(k) for a Software Change to an Existing Device”) on October 25, 2017 to assist industry in determining when a change to a previously 510(k)-cleared product requires a new premarket notification to be submitted to the FDA. These guidance documents replaced the 1997 guidance on the same topic. In November 2018, the FDA announced plans to significantly revise aspects of the 510(k) program to reduce reliance on older predicate devices (e.g., predicates that are less than 10 years old). In January 2019, the FDA also finalized guidance on an alternative 510(k) pathway, the “Safety and Performance Based Pathway,” which relies on modern performance-based criteria and current technological principles to demonstrate substantial equivalence rather than on direct comparisons to older predicates; the draft guidance was published earlier in 2018. With the changes to the 510(k) pathway, the FDA expects increased use of the de novo pathway, which is for the review of novel, low to moderate risk devices for which there is no existing predicate to use in determining substantial equivalence. The FDA intends these reform actions to improve the efficiency and transparency of the clearance process, as well as bolster patient safety. The FDA’s proposed changes to the 510(k) pathway and these guidance documents could impose additional regulatory requirements upon us that could: increase the costs of compliance; restrict our ability to maintain our current clearances; and delay our ability to obtain 510(k) clearances.

Even after we have obtained the proper regulatory clearance or approval to market a product, we have ongoing responsibilities under FDA regulations. The failure to comply with applicable regulations could jeopardize our ability to sell MRIdian and result in enforcement actions such as:

- warning letters;
- fines;
- injunctions;
- civil penalties;
- termination of distribution;
- recalls or seizures of products;
- delays in the introduction of products into the market;
- total or partial suspension of production;
- refusal to grant future clearances or approvals;
- withdrawals or suspensions of current clearances or approvals, resulting in prohibitions on sales of MRIdian; and
- in the most serious cases, criminal penalties.

Any of these sanctions could result in higher than anticipated costs or lower than anticipated sales and harm our reputation, business, financial condition and results of operations.

We also cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative or executive action, either in the United States or abroad. Certain policies of the Biden administration may impact our business and industry. For example, if the Biden administration were to impose constraints on the FDA's ability to engage in oversight and implementation activities in the normal course, our business may be negatively impacted.

In order to sell MRIdian in member countries of the EEA, MRIdian must comply with the essential requirements of the EU Medical Devices Directive (Council Directive 93/42/EEC). Compliance with these requirements is a prerequisite to be able to affix the CE mark to MRIdian, without which they cannot be sold or marketed in the EEA. To demonstrate compliance with the essential requirements we must undergo a conformity assessment procedure, which varies according to the type of medical device and its classification. Except for low-risk medical devices, where the manufacturer can issue an EC Declaration of Conformity based on a self-assessment of the conformity of its products with the essential requirements of the EU Medical Devices Directive, a conformity assessment procedure requires the intervention of an organization accredited by a Member State of the EEA to conduct conformity assessments, or a Notified Body. Depending on the relevant conformity assessment procedure, the Notified Body would typically audit and examine the technical file and the quality system for the manufacture, design and final inspection of our devices. The Notified Body issues a CE Certificate of Conformity following successful completion of a conformity assessment procedure conducted in relation to the medical device and its manufacturer and their conformity with the essential requirements. This certificate entitles the manufacturer to affix the CE mark to its medical devices after having prepared and signed a related EC Declaration of Conformity.

As a general rule, demonstration of conformity of medical devices and their manufacturers with the essential requirements must be based, among other things, on the evaluation of clinical data supporting the safety and performance of the products during normal conditions of use. Specifically, a manufacturer must demonstrate that the device achieves its intended performance during normal conditions of use, that the known and foreseeable risks, and any adverse events, are minimized and acceptable when weighed against the benefits of its intended performance, and that any claims made about the performance and safety of the device (e.g., product labeling and instructions for use) are supported by suitable evidence. We have the right to affix the CE mark to MRIdian Linac since September 2016. If we fail to remain in compliance with applicable European laws and directives, we would not be able to continue to affix the CE mark to MRIdian Linac, which would prevent us from selling MRIdian Linac within the EEA. We will also need to obtain regulatory approval in other foreign jurisdictions in which we plan to market and sell MRIdian Linac.

Modifications to MRIdian and our future products may require new 510(k) clearances or PMA approvals, or may require us to cease marketing or recall the modified products until clearances are obtained.

In the United States, we have obtained 510(k) premarket clearance from the FDA to market MRIdian for the provision of stereotactic radiosurgery and precision radiotherapy for lesions, tumors and conditions anywhere in the body where radiation treatment is indicated. Any modification to a 510(k)-cleared device that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, design or manufacture, requires a new 510(k) clearance or, possibly, approval of a PMA.

In December 2021, we received a 510(k) clearance from the FDA to market MRIdian A3i. As we make other changes or enhancements to our MRIdian system, we will need to determine whether additional FDA clearance is required or not. However, the FDA may not agree with our decisions regarding whether new clearances or approvals are necessary. We have made modifications to MRIdian in the past and have determined based on our review of the applicable FDA regulations and guidance that in certain instances new 510(k) clearances or PMA approvals were not required. We may make similar modifications or add additional features in the future that we believe do not require a new 510(k) clearance or approval of a PMA. If the FDA disagrees with our determination and requires us to submit new 510(k) notifications or PMA applications for modifications to our previously cleared products for which we have concluded that new clearances or approvals are unnecessary, we may be required to cease marketing or to recall the modified product until we obtain clearance or approval, and we may be subject to significant regulatory fines or penalties.

Furthermore, the FDA's ongoing review of and proposed changes to the 510(k) clearance process may make it more difficult for us to make modifications to our previously cleared products, either by imposing more strict requirements on when a new 510(k) notification for a modification to a previously cleared product must be submitted, or applying more onerous review criteria to such submissions. More recently, the FDA issued guidance ("Deciding When to Submit a 510(k) for a Change to an Existing Device" and "Deciding When to Submit a 510(k) for a Software Change to an Existing Device") on October 25, 2017 (replacement of a 1997 guidance document) to assist industry in determining when a change to a previously 510(k)-cleared product requires a new premarket notification to be submitted to the FDA. In November 2018, the FDA announced plans to significantly revise aspects of the 510(k) program to reduce reliance on older predicate devices (e.g., predicates that are less than 10 years old). In January 2019, the FDA also finalized guidance on an alternative 510(k) pathway, the "Safety and Performance Based Pathway," which relies on modern performance-based criteria and current technological principles to demonstrate substantial equivalence rather than on direct comparisons to older predicates; the draft guidance was published earlier in 2018. In addition, FDA issued guidance "Postmarket Management of Cybersecurity in Medical Devices" on December 28, 2016 and on October 18 2018, the FDA published related draft guidance, "Content of Premarket Submissions for Management of Cybersecurity in Medical Devices". These new guidance documents could impose additional regulatory requirements upon us that could: increase the costs of compliance; restrict our ability to maintain our current clearances; and delay our ability to obtain 510(k) clearances. We cannot guarantee whether the FDA's approach in future guidance will result in substantive changes to existing policy and practice regarding the assessment of whether a new 510(k) is required for changes or modifications to existing devices. The FDA continues to review its 510(k) clearance process, which could result in additional changes to regulatory requirements or guidance documents, which could increase the costs of compliance or restrict our ability to maintain current clearances.

If treatment guidelines for cancer radiation therapies change or the standard of care evolves, we may need to redesign and seek new marketing authorization from the FDA for MRIdian.

If treatment guidelines for cancer radiation therapies or the standard of care evolves, we may need to redesign MRIdian and seek new clearances or approvals from the FDA for MRIdian. Our 510(k) clearance from the FDA is based on current treatment guidelines. If treatment guidelines change so that different treatments become desirable, the clinical utility of MRIdian could be diminished and our business could suffer. For example, competition by other forms of cancer treatment, in particular personalized medicine approaches in targeting drugs and biologics, could reduce the use of radiation therapy as a standard of care in certain indications.

The misuse or off-label use of MRIdian Linac may harm our reputation in the marketplace, result in injuries that lead to product liability suits or result in costly investigations, fines or sanctions by regulatory bodies if we are deemed to have engaged in the promotion of these uses, any of which could be costly to our business.

Clinicians or physicians may misuse MRIdian Linac or use improper techniques if they are not adequately trained or otherwise, potentially leading to injury and an increased risk of product liability. If MRIdian Linac is misused or used with improper technique, we may become subject to costly litigation by our customers or their patients. Product liability claims could divert management's attention from our core business, be expensive to defend and result in sizeable damage awards against us that may not be covered by insurance. In addition, any of the events described above could harm our business and lead to regulatory action.

In addition, MRIdian Linac has been cleared by the FDA for specific treatments. We train our marketing and direct sales force to not promote MRIdian Linac for uses outside of the FDA-cleared indications for use, known as "off-label uses." For example, MRIdian Linac has not been indicated for diagnostic use. We cannot, however, prevent a physician from using MRIdian Linac off-label, when in the physician's independent professional medical judgment, he or she deems it appropriate. There may be increased risk of injury to patients if physicians attempt to use MRIdian Linac off-label. Furthermore, the use of MRIdian Linac for indications other than those cleared by the FDA or authorized by any foreign regulatory body may not effectively treat such conditions, which could harm our reputation in the marketplace among physicians and patients.

If the FDA or any foreign regulatory body determines that our promotional materials or training constitute promotion of an off-label use, it could request that we modify our training or promotional materials or subject us to regulatory or enforcement actions, including the issuance or imposition of an untitled letter, which is used for violators that do not necessitate a warning letter, injunction, seizure, civil fine or criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action under other regulatory authority, such as false claims laws, if they consider our business activities to constitute promotion of an off-label use, which could result in significant penalties, including, but not limited to, criminal, civil and administrative penalties, damages, fines, disgorgement, exclusion from participation in government healthcare programs and the curtailment of our operations.

Our MRIdian systems may cause or contribute to adverse medical events that we are required to report to regulatory bodies outside of the U.S. and to the FDA, and if we fail to do so, we would be subject to sanctions that could harm our reputation, business, financial condition and results of operations. The discovery of serious safety issues with our MRIdian systems, or a recall of our MRIdian systems either voluntarily or at the direction of the FDA or another governmental authority, could have a negative impact on us.

We are subject to the FDA's medical device reporting regulations and similar foreign regulations, which require us to report to the FDA when we receive or become aware of information that reasonably suggests that MRIdian may have caused or contributed to a death or serious injury or malfunctioned in a way that, if the malfunction were to recur, it could cause or contribute to a death or serious injury. The timing of our obligation to report is triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events of which we become aware within the prescribed timeframe. We may also fail to recognize that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of MRIdian. If we fail to comply with our reporting obligations, the FDA could take action, including warning letters, untitled letters, administrative actions, criminal prosecution, imposition of civil monetary penalties, revocation of our device clearance, seizure of MRIdian or delay in clearance of future products.

The FDA and foreign regulatory bodies have the authority to require the recall of commercialized products in the event of material deficiencies or defects in design or manufacture of a product or in the event that a product poses an unacceptable risk to health. The FDA's authority to require a recall must be based on a finding that there is reasonable probability that the device could cause serious injury or death. We may also choose to voluntarily recall a product if any material deficiency is found. A government-mandated or voluntary recall by us could occur as a result of an unacceptable risk to health, component failures, malfunctions, manufacturing defects, labeling or design deficiencies, packaging defects, repeated misuse or other deficiencies or failures to comply with applicable regulations. We cannot assure you that similar or more significant product defects or other errors will not occur in the future. Recalls involving MRIdian could be particularly harmful to our business, financial condition and results of operations because it is currently our only product.

Companies are required to maintain certain records of recalls and corrections, even if they are not reportable to the FDA or other regulatory bodies. We may initiate voluntary withdrawals or corrections for MRIdian in the future that we determine do not require notification of the FDA or other regulators in the US and around the world. If the FDA disagrees with our determinations, it could require us to report those actions as recalls and we may be subject to enforcement action. A future recall announcement could harm our reputation with customers, potentially lead to product liability claims against us and negatively affect our sales.

Any actual or perceived failure by us to comply with legal or regulatory requirements related to privacy or data security in one or multiple jurisdictions could result in proceedings, actions or penalties against us.

Many jurisdictions have enacted or are considering enacting privacy and/or data security legislation, including laws and regulations applicable to the collection, use, storage, transfer, disclosure and/or processing of personal information. For example, the U.S. Department of Health and Human Services has promulgated rules governing the privacy and security of individually identifiable health information under the Health Insurance Portability and Accountability Act of 1996, or HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH. These privacy and security rules protect medical records and other patient health information (PHI) by limiting their use and disclosure, giving individuals the right to access, amend and seek accounting of their own health information, limiting most uses and disclosures of health information to the minimum amount reasonably necessary to accomplish the intended purpose, and requiring administrative, technical and physical safeguards. Although we are not a covered entity under HIPAA, we have entered into agreements with certain covered entity customers, such as health care providers, under which we are considered to be a "business associate" under HIPAA. As a business associate, we are contractually bound and may also be directly responsible under HIPAA, as amended by HITECH, to implement policies, procedures and reasonable and appropriate security measures to protect any individually identifiable health information we may create, receive, maintain or transmit on behalf of covered entities. We may also be subject to state laws protecting the confidentiality of medical records where those state laws have stricter provisions than HIPAA.

The costs of compliance with, and other burdens imposed by, such laws and regulations that are applicable to the businesses of our customers may limit the use and adoption of our products and reduce overall demand for them. These privacy and data security related laws and regulations are evolving and may result in increasing regulatory and public scrutiny and escalating levels of enforcement and sanctions. Although we continually work to comply with those federal, state, and foreign laws and regulations, industry standards, contractual obligations and other legal obligations that apply to us, those laws, regulations, standards and obligations are evolving and may be modified, interpreted and applied in an inconsistent manner from one jurisdiction to another, and may conflict with one another, other requirements or legal obligations, our practices or the features of our platform. Any failure or perceived failure by us to comply with federal, state or foreign laws or regulations, industry standards, contractual obligations or other legal obligations, or any actual or suspected security incident, whether or not resulting in unauthorized access to, or acquisition, release or transfer of personal information or other data, may result in governmental enforcement actions and prosecutions, private litigation, fines and penalties or adverse publicity and could cause our customers to lose trust in us, which could have an adverse effect on our reputation and business. Any inability to adequately address privacy and security concerns, even if unfounded, or comply with applicable laws, regulations, policies, industry standards, contractual obligations, or other legal obligations could result in additional cost and liability to us, damage our reputation, inhibit sales, and adversely affect our business.

We also expect that there will continue to be new proposed laws, regulations and industry standards concerning privacy, data protection and information security in the United States, the European Union and other jurisdictions, and we cannot yet determine the impact such future laws, regulations and standards may have on our business. In addition to government activity, privacy advocacy groups and technology and other industries are considering various new, additional or different self-regulatory standards that my place additional burdens on us. New laws, amendments to or re-interpretations of existing laws and regulations, industry standards, contractual obligations and other obligations may require us to incur additional costs and restrict our business operations. Such laws and regulations may require companies to implement privacy and security policies, inform individuals of security breaches that affect their personal information, and, in some cases, obtain individuals' consent to use personal information for certain purposes.

Our failure to comply with applicable laws and regulations could result in enforcement action against us, including fines and public censure, claims for damages by customers and other affected individuals, damage to our reputation and loss of goodwill (both in relation to existing customers and prospective customers), any of which could harm our business, results of operations and financial condition.

If we or our distributors do not obtain and maintain international regulatory registrations or approvals for MRIdian, we will not be able to market and sell MRIdian outside of the United States.

Sales of our devices outside the United States are subject to foreign regulatory requirements that vary widely from country to country. In addition, the FDA regulates exports of medical devices from the United States. While the regulations of some countries may not impose barriers to marketing and selling MRIdian or only require notification, others require that we or our distributors obtain the approval of a specified regulatory body. Complying with foreign regulatory requirements, including obtaining registrations or approvals, can be expensive and time-consuming, and we cannot be certain that we or our distributors will receive regulatory approvals in each country in which we plan to market MRIdian or that we will be able to do so on a timely basis. The time required to obtain registrations or approvals, if required by other countries, may be longer than that required for FDA clearance, and requirements for such registrations or approvals may significantly differ from FDA requirements. If we modify MRIdian, we or our distributors may need to apply for additional regulatory approvals before we are permitted to sell the modified product. In addition, we may not continue to meet the quality and safety standards required to maintain the authorizations that we or our distributors have received. If we or our distributors are unable to maintain our authorizations in a particular country, we will no longer be able to sell MRIdian in that country, which could harm our business.

Regulatory clearance or approval by the FDA does not ensure marketing authorization by regulatory authorities in other countries, and authorization for marketing by one or more foreign regulatory authorities does not ensure marketing authorization will be granted by regulatory authorities in other foreign countries or by the FDA. However, a failure or delay in obtaining marketing authorization in one country may have a negative effect on the regulatory process in others.

We must manufacture MRIdian in accordance with federal and state regulations, and we could be forced to recall our installed systems or terminate production if we fail to comply with these regulations.

The methods used in, and the facilities used for, the manufacture of MRIdian must comply with the FDA's QSR, which is a complex regulatory scheme that covers the procedures and documentation of the design, testing, production, process controls, quality assurance, labeling, packaging, handling, storage, distribution, installation, servicing and shipping of MRIdian. Furthermore, we are required to verify that our suppliers maintain facilities, procedures and operations that comply with our quality and applicable regulatory requirements. The FDA enforces the QSR through periodic announced or unannounced inspections of medical device manufacturing facilities, which may include the facilities of subcontractors.

MRIdian is also subject to similar state regulations and various laws and regulations of foreign countries governing manufacturing.

We cannot guarantee that we or any subcontractors will take the necessary steps to comply with applicable regulations, which could cause delays in the delivery of MRIdian. In addition, failure to comply with applicable FDA requirements or later discovery of previously unknown problems with MRIdian or manufacturing processes could result in, among other things:

- warning letters or untitled letters;
- fines, injunctions or civil penalties;
- suspension or withdrawal of approvals or clearances;
- seizures or recalls of MRIdian;
- total or partial suspension of production or distribution;
- administrative or judicially imposed sanctions;
- FDA's refusal to grant pending or future clearances or approvals for MRIdian;
- clinical holds;
- refusal to permit the import or export of MRIdian; and
- criminal prosecution of us or our employees.

Any of these actions could significantly and negatively impact supply of MRIdian. If any of these events occurs, our reputation could be harmed, we could be exposed to product liability claims and we could lose customers and suffer reduced revenue and increased costs.

Legislative or regulatory reforms in the United States or the EU may make it more difficult and more costly for us to obtain regulatory clearances or approvals for MRIdian or to produce, market or distribute MRIdian after clearance or approval is obtained.

From time to time, legislation is drafted and introduced in Congress that could significantly change the statutory provisions governing the regulation of medical devices or the reimbursement thereof. In addition, the FDA or the NRC regulations and guidance are often revised or reinterpreted by the FDA or NRC in ways that may significantly affect our business and our MRIdian systems In addition, as part of Food and Drug Administration Safety and Innovation Act, or FDASIA, Congress reauthorized the Medical Device User Fee Amendments with various FDA performance goal commitments and enacted several "Medical Device Regulatory Improvements" and miscellaneous reforms, which are further intended to clarify and improve medical device regulation both pre- and post-clearance or approval. Any new statutes, regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of any future products or make it more difficult to manufacture, market or distribute MRIdian or future products. We cannot determine what effect changes in regulations, statutes, legal interpretation or policies, when and if promulgated, enacted or adopted may have on our business in the future. Such changes could, among other things, require:

- additional testing prior to obtaining clearance or approval;
- changes to manufacturing methods;
- recall, replacement or discontinuance of MRIdian or future products; or
- additional record keeping.

Any of these changes could require substantial time and cost and could harm our business and our financial results.

We are subject to federal and state fraud and abuse laws and health information privacy and security laws, which, if violated, could subject us to substantial penalties. Additionally, any challenge to or investigation into our practices under these laws could cause adverse publicity and be costly to respond to, and thus could harm our business.

There are numerous U.S. federal and state laws pertaining to healthcare fraud and abuse, including anti-kickback, false claims and physician transparency laws. Our relationships with providers and hospitals are subject to scrutiny under these laws. We may also be subject to patient privacy regulation by both the federal government and the states in which we conduct our business. The laws that may affect our ability to operate include:

- the federal Anti-Kickback Statute, which prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce either the referral of an individual or furnishing or arranging for a good or service, for which payment may be made, in whole or in part, under federal healthcare programs, such as Medicare and Medicaid. A person or entity does not need to have actual knowledge of the statute or specific intent

to violate it to have committed a violation. Moreover, the government may assert that a claim including items or services resulting from a violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim for purposes of the False Claims Act; Some states have adopted laws similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs;

- federal civil and criminal false claims laws and civil monetary penalty laws, which prohibit, among other things, individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid or other third-party payors that are false or fraudulent;
- HIPAA, which created federal criminal statutes that prohibit, among other things, executing a scheme to defraud any healthcare benefit program and making false statements relating to healthcare matters. Similar to the federal Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation;
- the federal physician sunshine requirements under the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act, collectively referred to as the Affordable Care Act, which require certain manufacturers of drugs, devices, biologics and medical supplies to report annually to the U.S. Department of Health and Human Services information related to payments and other transfers of value to physicians, which is defined broadly to include other healthcare providers and teaching hospitals and ownership and investment interests held by physicians and their immediate family members;
- state law equivalents of each of the above federal laws, such as anti-kickback and false claims laws that may apply to items or services reimbursed by any third-party payor, including commercial insurers;
- state laws that require device companies to comply with the industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government, or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; and
- state laws that require device manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures.

These laws, among other things, constrain our business, marketing and other promotional activities by limiting the kinds of financial arrangements, including sales programs, we may have with hospitals, physicians or other potential purchasers of medical devices. We have a variety of arrangements with our customers that could implicate these laws. Due to the breadth of these laws, the narrowness of statutory exceptions and safe harbors available, and the range of interpretations to which they are subject, it is possible that some of our current or future practices might be challenged under one or more of these laws. Even an unsuccessful challenge or investigation into our practices could cause adverse publicity, and be costly to respond to, and thus could harm our business, financial condition and results of operations.

If our operations are found to be in violation of any of the laws described above or any other governmental regulations that apply to us, we may be subject to penalties, including administrative, civil and criminal penalties, damages, fines, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, imprisonment and the curtailment or restructuring of our operations, any of which could negatively impact our ability to operate our business and our results of operations.

Healthcare policy changes, including legislation reforming the U.S. healthcare system, could harm our cash flows, financial condition and results of operations.

Any changes in federal health care programs, including the Affordable Care Act, Medicare, and others, may affect how state and federal governments and employers pay for health care products and services. Such changes could result in reduced demand for MRIdian or additional pricing pressure. Other changes, such as the RO Model, could also affect demand for MRIdian systems.

Risks Related to Ownership of Our Common Stock

The price of our common stock may be volatile and may be influenced by numerous factors, some of which are beyond our control.

Factors that could cause volatility in the market price of our common stock include, but are not limited to:

- impacts to our business operations caused by the COVID-19 pandemic and its follow-on effects;
- actual or anticipated fluctuations in our financial condition and operating results;
- actual or anticipated changes in our growth rate relative to our competitors or market expectations;

- commercial success and market acceptance of MRIdian;
- success of our competitors in discovering, developing or commercializing products;
- ability to commercialize or obtain regulatory approvals for MRIdian, or delays in commercializing or obtaining regulatory approvals;
- strategic transactions undertaken by us;
- additions or departures of key personnel;
- product liability claims;
- prevailing economic conditions;
- disputes concerning our intellectual property or other proprietary rights;
- FDA or other U.S. or foreign regulatory actions affecting us or the healthcare industry;
- healthcare reform measures in the United States;
- sales of our common stock by our officers, directors or significant stockholders;
- future sales or issuances of equity or debt securities by us;
- business disruptions caused by earthquakes, tornadoes or other natural disasters; and
- changes in the manner that investors and securities analysts who provide research on us to the marketplace analyze the value of our common stock.

In addition, the stock markets in general, and the markets for medical device companies in particular, have experienced extreme volatility that have been often unrelated to the operating performance of the issuer. These broad market fluctuations may negatively impact the price or liquidity of our common stock. In the past, when the price of a stock has been volatile, holders of that stock have sometimes instituted securities class action litigation against the issuer. In the past, we have incurred substantial costs in defending such litigation matters, and any future lawsuits of this type could cause us to incur substantial defense costs and could divert our management's attention from the operation of our business.

Future sales of our common stock or securities convertible or exchangeable for our common stock may cause our stock price to decline.

If our existing stockholders or option holders sell, or indicate an intention to sell, substantial amounts of our common stock in the public market after any applicable legal restrictions on resale lapse, the price of our common stock could decline. The perception in the market that these sales may occur could also cause the price of our common stock to decline. At December 31, 2022, we have outstanding a total of 181,586,944 shares of common stock.

In addition, at December 31, 2022, 15.3 million shares of our common stock were issuable upon exercise of options or vesting of restricted stock units, performance stock units, and deferred stock units issued under our stock incentive plans and there were 8.8 million shares of our common stock available for issuance under our stock incentive plans and employee stock purchase plan. These shares will become eligible for sale in the public market to the extent permitted by the provisions of various vesting schedules and Rule 144 under the Securities Act, which includes, for shares held by directors, executive officers and other affiliates, volume limitations under Rule 144 under the Securities Act. From time to time, we may request additional shares if we anticipate that equity-based compensation needs may exceed the remaining shares available under the 2015 Equity Incentive Award Plan (as amended and restated, the "2015 Plan"). If the shares we may issue from time to time under the 2015 Plan, the 2018 Inducement Plan (the "2018 Plan") or the 2015 Employee Stock Purchase Plan (as amended and restated, the "ESPP") are sold, or if it is perceived that they will be sold, by the award recipients in the public market, the price of our common stock could decline.

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

In the future, we may issue our authorized but previously unissued equity securities, resulting in the dilution of the ownership interests of our present stockholders and the purchasers of our common stock. We are authorized to issue an aggregate of 300,000,000 shares of common stock and 10,000,000 shares of "blank check" preferred stock. We may issue additional shares of our common stock or other securities that are convertible into or exercisable for our common stock in connection with hiring or retaining employees, future acquisitions, future sales of our securities for capital raising purposes, or for other business purposes. The future issuance of any such additional shares of our common stock may create downward pressure on the trading price of the common stock. We may need to raise additional capital in the near future to meet our working capital needs, and there can be no assurance that we will not be required to issue additional shares, warrants or other convertible securities in the future in conjunction with these capital raising efforts, including at a price (or exercise prices) below the price you paid for your stock.

Our operating results for a particular period may fluctuate significantly or may fall below the expectations of investors or securities analysts, each of which may cause our stock price to fluctuate or decline.

We expect our operating results to be subject to fluctuations. Our operating results will be affected by numerous factors, including:

- impacts to our business operations caused by the COVID-19 pandemic;
- variations in the level of expenses related to MRIdian systems or future development programs;
- level of underlying demand for MRIdian and any other products we develop;
- addition or termination of clinical trials or funding support;
- receipt, modification or termination of government contracts or grants, and the timing of payments we receive under these arrangements;
- our execution of any collaborative, licensing or similar arrangements, and the timing of payments we may make or receive under these arrangements;
- any intellectual property infringement lawsuit or opposition, interference or cancellation proceeding in which we may become involved;
- regulatory developments affecting MRIdian Linac or our competitors; and
- the other risk factors detailed in the "Risk Factors" section.

If our operating results for a particular period fall below the expectations of investors or securities analysts, the price of our common stock could decline substantially. Furthermore, any fluctuations in our operating results may, in turn, cause the price of our common stock to fluctuate substantially. We believe that comparisons of our financial results from various reporting periods are not necessarily meaningful and should not be relied upon as an indication of our future performance.

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

Based on the beneficial ownership of our common stock at December 31, 2022, our officers and directors, together with holders of 5% or more of our outstanding common stock and their respective affiliates, beneficially own approximately 57% of our common stock. Accordingly, these stockholders will continue to have significant influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, merger, consolidation or sale of all or substantially all of our assets or any other significant corporate transaction.

Further, Fosun International Limited (Fosun) has the right pursuant to certain securities purchase agreements to request appointment of a representative of Fosun as a non-voting observer to our board of directors, subject to meeting certain continuing stock ownership thresholds. Currently, no such non-voting observer has been appointed by Fosun. The interests of these stockholders may not be the same as or may even conflict with your interests. For example, these stockholders could delay or prevent a change in control of the Company, even if such a change in control would benefit our other stockholders, which could deprive our stockholders of an opportunity to receive a premium for their common stock as part of a sale of the Company or our assets and might affect the prevailing price of our common stock. The significant concentration of stock ownership may negatively impact the price of our common stock due to investors’ perception that conflicts of interest may exist or arise.

Provisions of our charter documents or Delaware law could delay or prevent an acquisition of the Company, even if such an acquisition would be beneficial to our stockholders, which could make it more difficult for you to change management.

Provisions in our certificate of incorporation and our bylaws may discourage, delay or prevent a merger, acquisition or other change in control that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. In addition, these provisions may frustrate or prevent any attempt by our stockholders to replace or remove our current management by making it more difficult to replace or remove our board of directors. These provisions include:

- a classified board of directors, so that not all directors are elected at one time;
- a prohibition on stockholder action through written consent;
- no cumulative voting in the election of directors;
- the exclusive right of our board of directors to elect a director to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director;

- a requirement that special meetings of stockholders be called only by the board of directors, the chairman of the board of directors, the chief executive officer or, in the absence of a chief executive officer, the president;
- an advance notice requirement for stockholder proposals and nominations;
- the authority of our board of directors to issue preferred stock with such terms as our board of directors may determine; and
- a requirement of approval of not less than 66 2/3% of all outstanding shares of our capital stock entitled to vote to amend any bylaws by stockholder action, or to amend specific provisions of our certificate of incorporation.

In addition, Delaware law prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person who, together with its affiliates, owns, or within the last three years has owned, 15% or more of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. Accordingly, Delaware law may discourage, delay or prevent a change in control of the Company. Furthermore, our certificate of incorporation specifies that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for most legal actions involving actions brought against us by stockholders. We believe this provision benefits us by providing increased consistency in the application of Delaware law by chancellors particularly experienced in resolving corporate disputes, efficient administration of cases on a more expedited schedule relative to other forums and protection against the burdens of multi-forum litigation. However, the provision may have the effect of discouraging lawsuits against our directors and officers. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that, in connection with any applicable action brought against us, a court could find the choice of forum provisions contained in our certificate of incorporation to be inapplicable or unenforceable in such action.

Provisions in our charter documents and other provisions of Delaware law could limit the price that investors are willing to pay in the future for shares of our common stock.

We do not anticipate paying any cash dividends on our common stock in the foreseeable future; therefore, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

We have never declared or paid cash dividends on our common stock. We do not anticipate paying any cash dividends on our common stock in the foreseeable future. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business. In addition, our current credit, security and guaranty agreement with MidCap and SVB contains, and our future loan arrangements may contain, terms prohibiting or limiting the amount of dividends that may be declared or paid on our common stock. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

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

The trading market for our common stock will depend, in part, on the research and reports that securities or industry analysts publish about us or our business. If one or more of the analysts who cover us downgrade our common stock or publish inaccurate or unfavorable research about our business, our stock price could decline. In addition, if our operating results fail to meet the forecast of analysts, our stock price could decline. If one or more of these analysts cease coverage of the Company or fail to publish reports on us regularly, demand for our common stock could decrease, which might cause our stock price and trading volume to decline.

Risks Related to Environmental and Climate Concerns

Our manufacturing operations are subject to a number of federal, state and local environmental laws, rules and regulations.

Although our manufacturing and other activities do not presently produce meaningful levels of greenhouse gas emissions, our operating expenses could be adversely affected if legal and regulatory developments related to climate change or other initiatives result in increased energy or other costs. We could also be affected by climate change and other environmental issues to the extent such issues adversely affect the general economy or result in severe weather affecting the communities in which our facilities are located. At this time, based on current climate conditions and our assessment of existing and pending environmental rules and regulations, as well as treaties and international accords relating to climate change, we do not believe that the costs of complying with environmental laws, including regulations relating to climate change issues,

will have a material adverse effect on our future capital expenditures, results of operations or cash flows. There were no material capital expenditures for environmental matters in the year ended December 31, 2022.

Our business involves the use of hazardous materials and we and our third-party manufacturers must comply with environmental laws and regulations, which may be expensive and restrict how we do business.

Our third-party manufacturers' activities and our own activities involve the controlled storage, use and disposal of hazardous materials, including Cobalt-60, lead and depleted uranium. We and our manufacturers are subject to federal, state, local and foreign laws and regulations governing the use, generation, manufacture, storage, handling and disposal of these hazardous materials. We currently carry no insurance specifically covering environmental claims relating to the use of hazardous materials, but we do reserve funds to address these claims at both the federal and state levels. Although we believe that our safety procedures for handling and disposing of these materials and waste products comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental injury or contamination from the use, storage, handling or disposal of hazardous materials. In the event of an accident, state or federal or other applicable authorities may curtail our use of these materials and interrupt our business operations. In addition, if an accident or environmental discharge occurs, or if we discover contamination caused by prior operations, including by prior owners and operators of properties we acquire, we could be liable for cleanup obligations, damages and fines. If such unexpected costs are substantial, this could significantly harm our financial condition and results of operations.

Regulations related to "conflict minerals" may force us to incur additional expenses, may result in damage to our business reputation and may adversely impact our ability to conduct our business.

The Dodd-Frank Wall Street Reform and Consumer Protection Act and the rules promulgated by the SEC under such act require companies, including us, to disclose the existence in their products of certain metals, including tantalum, tin, gold, tungsten and their derivatives, that originate from the Democratic Republic of the Congo and adjoining countries. Under these rules, we are required to obtain sourcing data from suppliers, perform supply chain due diligence, and file annually with the SEC a specialized disclosure report on Form SD covering the prior calendar year. These requirements could adversely affect the sourcing, availability, and pricing of minerals used in the manufacture of components used in MRIdian. We may face reputational harm if we determine that certain of our components contain minerals not determined to be conflict free or if we are unable to alter our processes or sources of supply to avoid using such materials. Additionally, we may also encounter customers who require that all of the components of our products be certified as conflict free. If we are not able to meet this requirement, such customers may choose not to purchase our products, which could adversely impact sales of our products, and impact our results of operations. In addition, we have incurred and expect to incur additional costs to comply with these disclosure requirements, including costs related to determining the source of any of the relevant minerals and metals used in MRIdian.

Item 1B. UNRESOLVED STAFF COMMENTS

None.

Item 2. PROPERTIES

Facilities

Our corporate headquarters are located in Denver, Colorado, where we lease and occupy approximately 12,800 square feet of office space. The current term of our Denver office lease expires in October 2024. We also lease 19,800 square feet of office space in Oakwood Village, Ohio. The current term of our Oakwood Village lease expires on October 31, 2026. We also maintain two offices in Mountain View, California. For the first office, we lease and occupy approximately 25,500 square feet of office space. The current term of this Mountain View lease expires on July 31, 2025. In connection with this lease, we entered into a standby letter of credit with PNC Bank, National Association for $0.8 million, which is still outstanding at December 31, 2022. In April 2018, we entered into a lease agreement to lease approximately 24,600 square feet of additional office space for our second office in Mountain View, California. The second office lease in Mountain View, California commenced in December 2018 and will expire in December 2025. The Company has the option to extend the term of the lease for a period of up to five years. In March 2022, the Company entered into an agreement to sublease all 24,600 rentable square feet of one of its Mountain View office spaces to a subtenant to reduce expenses related to the unused space. The sublease commenced on May 2, 2022 and will expire on March 31, 2024, unless terminated earlier in accordance with the sublease agreement.

Item 3. LEGAL PROCEEDINGS

We are not currently involved in any material litigation. From time to time, we may become involved in various lawsuits and legal proceedings which arise in the ordinary course of business. Litigation is subject to inherent uncertainties, and one

or more unfavorable outcomes in any claim or litigation against us could have a material adverse effect in the period in which they are resolved and on our business generally. In addition, regardless of their merits or their ultimate outcomes, lawsuits and legal proceedings are costly, divert management attention and may materially adversely affect our reputation, even if resolved in our favor.

The information under the caption “Commitments and Contingencies” in Note 6 of the consolidated financial statements of this Annual Report on Form 10-K is incorporated herein by reference.

Item 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

Item 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is traded on the Nasdaq Global Market under the symbol “VRAY”, which listing was completed on March 30, 2016.

As of February 22, 2023, there were 71 registered stockholders of record of our common stock. Because many of our shares of common stock are held by brokers or other institutions on behalf of stockholders, we are unable to estimate the total number of beneficial stockholders and believe the number of registered stockholders of record underestimates our total number of stockholders.

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

For equity compensation plan information, please refer to Item 12 in Part III of this Annual Report.

Recent Sales of Unregistered Securities

During the year ended December 31, 2022, there were no sales of unregistered equity securities by the Company.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The Company does not have a stock repurchase program and did not make any share repurchases during the year ended December 31, 2022.

Item 6. RESERVED

Item 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following management’s discussion and analysis should be read in conjunction with the financial statements and the related notes thereto contained in this Annual Report. In addition to historical information, this discussion and analysis contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. These forward-looking statements are subject to risks and uncertainties, including those under “Risk Factors” in this Annual Report that could cause actual results or events to differ materially from those expressed or implied by the forward-looking statements. See “Cautionary Note Regarding Forward-Looking Statements” in this Annual Report.

Unless otherwise indicated, references in this section to “ViewRay,” “we,” “us,” “our,” “the Company” and “our Company” refer to ViewRay, Inc. and its consolidated subsidiary, ViewRay Technologies, Inc.

The following discussion highlights our results of operations and the principal factors that have affected our financial condition as well as our liquidity and capital resources for the periods described, and provides information that management believes is relevant for an assessment and understanding of the statements of financial condition and results of operations presented herein. The following discussion and analysis are based on our consolidated financial statements contained in this Annual Report, which we have prepared in accordance with United States generally accepted accounting principles. You should read this discussion and analysis together with such consolidated financial statements and the related notes thereto.

A comparison of the results for the year ended December 31, 2022 and 2021 is provided below. Our Annual Report on Form 10-K for the year ended December 31, 2021 includes a discussion and analysis of our financial condition and results of operations for the year ended December 31, 2020 in Part II, Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

Company Overview

We design, manufacture and market the MRIdian MRI-guided Radiation Therapy System. The MRIdian is built upon a proprietary high-definition magnetic resonance (“MR”) imaging system designed from the ground up to address the unique

challenges and clinical workflow for advanced radiation oncology. There are two generations of the MRIdian: the first generation MRIdian with radiation delivery using Cobalt-60 and the second generation MRIdian Linac, with more advanced linear accelerator or 'linac' to deliver the radiation beams. MRIdian with Cobalt-60 is no longer commercially available.

Both generations of the MRIdian have received 510(k) marketing clearance from the FDA and permission to affix the CE mark. Additionally, the newest version of MRIdian, MRIdian A3i, received 510(k) marketing clearance from the FDA in December 2021.

MRIdian is the first radiation therapy system that enables simultaneous radiation treatment delivery and real-time MRI imaging of a patient's internal anatomy. It generates high-quality images that differentiate between the targeted tumor, surrounding soft tissue and nearby critical organs. MRIdian also records the level of radiation dose that the treatment area has received, enabling physicians to adapt the prescription between treatments, as needed. We believe this improved visualization and accurate dose recording will enable better treatment, improve patient outcomes and reduce side effects. Key benefits to users and patients include: improved imaging and patient alignment; the ability to adapt the patient's radiation treatments to changes while the patient is still on the treatment table, or "on-table adaptive treatment planning"; MRI-based motion management; and an accurate recording of the delivered radiation dose. Physicians have already used MRIdian to treat a broad spectrum of radiation therapy patients with more than 45 different types of cancer, as well as patients for whom radiation therapy was previously not an option.

MRIdian A3i streamlines the on-table adaptive workflow by allowing clinicians to intelligently auto-contour, auto-adapt, and auto-gate. Enabling clinicians to collaborate simultaneously and connect remotely during patient treatment. The automated workflow steps and contouring tools are designed to minimize clinician time and increase patient throughput.

MRIdian A3i expands existing real-time tissue tracking and automated beam gating functionalities to include multiplanar tracking and gating in up to three planes. Our customers have the flexibility to select up to three different tracking targets in any combination of coronal, sagittal, or axial planes to automatically stop the beam when any single target exceeds the clinician-defined treatment boundaries.

At December 31, 2022, a total of 56 MRIdian systems, one MRIdian with Cobalt-60 system and 55 MRIdian Linac systems, are in operation worldwide (26 in the United States and 30 outside the United States). In addition, 16 MRIdian Linac systems have been delivered to customers that are in varying stages of deployment.

We currently market MRIdian through a direct sales force in the United States. In the rest of the world, we market MRIdian through a hybrid model of both a direct sales force and distribution network. We market MRIdian to a broad range of worldwide customers, including university research and teaching hospitals, community hospitals, private practices, government institutions and freestanding cancer centers. As with the traditional linac market, our sales and revenue cycles vary based on the particular customer and can be lengthy, sometimes lasting up to 18 to 24 months (or more) from initial customer contact to order contract execution. Following execution of an order contract, it generally takes nine to 15 months for a customer to customize an existing facility or construct a new vault. Upon the commencement of installation at a customer's facility, it typically takes approximately 45 to 60 days for us to install MRIdian and perform on-site testing of the system, including the completion of acceptance test procedures.

We generated product, service and distribution rights revenues of $102.2 million, $70.1 million and $57.0 million, and had net losses of $107.3 million, $110.0 million and $107.9 million during the years ended December 31, 2022, 2021, and 2020, respectively.

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

- navigate our business activities through the impacts of the COVID-19 pandemic;
- manage delays experienced by our third-party suppliers and distributors;
- continue our research and development efforts;
- seek regulatory approval for MRIdian in certain foreign countries; and
- operate as a public company.

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

November 2021 Public Offering of Common Stock

On November 16, 2021, we entered into an underwriting agreement with Piper Sandler & Co. and Stifel, Nicolaus & Company, Incorporated, as representatives of the several underwriters named therein (the “November 2021 Underwriters”), with respect to the issuance and sale of 14,375,000 shares of our common stock, which included the full exercise of the November 2021 Underwriters' option to purchase additional shares, at a price to the public of $5.60 per share. We completed the offering on November 18, 2021 and received net proceeds of approximately $75.1 million, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

January 2021 Public Offering of Common Stock

On January 4, 2021, we entered into an underwriting agreement with Piper Sandler & Co., as representative of the several underwriters named therein, with respect to the issuance and sale of 11,856,500 shares of our common stock, which included the full exercise of the underwriters’ option to purchase additional shares, at a price to the public of $4.85 per share. We completed the offering on January 7, 2021 and received net proceeds of approximately $53.5 million, after deducting the underwriting discounts and commissions and offering expenses payable by us.

Term Loan

In December 2018, we entered into a term loan agreement with SVB (the “SVB Term Loan”). The SVB Term Loan was subsequently amended, and on May 31, 2022, we entered into the Fourth Amendment (the “Fourth Amendment”) to SVB Term Loan. As noted below, the SVB Term Loan was repaid in full as part of the Credit Agreement.

Credit Agreement

On November 14, 2022, we entered into a new five-year loan facility agreement with MidCap Financial ("MidCap") and Silicon Valley Bank ("SVB") (the “Credit Agreement”). The Credit Agreement consists of a term loan of up to $100 million and a revolving credit facility of up to $25 million.

Term Loan

The key elements of the term loan include (i) a term loan commitment up to $100 million, of which $25 million may be accessed upon achievement of a gross margin target for the 2023 fiscal year; (ii) an annual interest rate of the Wall Street Journal (“WSJ”) Prime rate plus 3.5% with a floor of 9.25%; (iii) an exit fee payment of 4.00% of the aggregate principal amount, and (iv) a maturity date of November 1, 2027, with three years of interest only payments, with the option to extend the interest only period for one additional year at our election. At close, we drew $75 million, of which $60 million was used to retire its existing SVB Term Loan.

Revolving Credit Facility

The key elements of the revolving line of credit under the Credit Agreement include (i) a revolving line of credit of up to $25 million, comprised of an initial $15 million commitment, with the option to increase the line by an additional $10 million, subject to lender approval and borrowing base availability; (ii) an annual interest rate of the WSJ Prime rate plus 0.5% with a floor of 6.25%; (iii) a maturity date of November 1, 2027. At close, we drew $5.0 million.

Additional details regarding the Credit Agreement are included in the section entitled “Notes to Consolidated Financial Statements – Note 5 – Debt” in the consolidated financial statements included elsewhere in this Form 10-K.

The Credit Agreement is secured by substantially all assets of the Company, except that the collateral does not include any intellectual property held by the Company, provided, however, the collateral does include all accounts and proceeds of such intellectual property.

The Credit Agreement contains customary representations and warranties and customary affirmative and negative covenants applicable to the Company and its subsidiaries, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness, dividends and other distributions and transactions with affiliates. The Credit Agreement also contains financial covenants that require the Company to maintain a minimum net revenue threshold and a minimum backlog balance.

Impact of the COVID-19 Pandemic

The COVID-19 pandemic and its follow-on effects have impacted and will continue to impact business activity across industries worldwide, including ViewRay.

Due to pandemic-related factors including delays in service from our global supply chain partners and travel and quarantine restrictions imposed by government agencies and our customers in response to the spread of COVID-19, we have experienced delays in installation of systems in the United States, Asia and Europe. Similarly, our ability to conduct

commercial efforts with our customers has been disrupted due to the impact of COVID-19 on our customers. If the economic effects of the COVID-19 pandemic persist or travel restrictions are reinstated, our ability to conduct our business and access capital markets will be negatively impacted. Capital equipment sales, which make up the majority of our revenue and which were negatively impacted by the pandemic, may take longer than other areas of the economy to return to pre-pandemic levels, and this may continue to have a material impact on our business. The impacts of the COVID-19 pandemic have slowed, but they persist globally and may negatively impact our operations in areas that we are not aware of currently. See Item 1A "Risk Factors" for a discussion of certain risks related to COVID-19.

Impact of Inflation

In recent years, inflation has not had a significant impact on our operations. However, as inflation has increased over the past year, we are monitoring the potential impact on our business, including increases in product cost in connection with the parts used in our manufacturing process, freight and transportation costs, and wage pressure. Should the increase in inflation persist, it will likely increase the costs of conducting our operations, which would adversely impact our profitability. See Item 1A "Risk Factors" for a discussion of certain risks related to inflation.

New Orders and Backlog

New orders are defined as the sum of gross product orders, representing MRIdian contract price, recorded in backlog during the period. Backlog is the accumulation of all orders for which revenue has not been recognized and which we consider valid. Backlog includes customer deposits or letters of credit, except when the sale is to a customer where a deposit is not deemed necessary or customary. Deposits received are recorded in a customer deposit liability account on the balance sheet. Orders may be revised or cancelled according to their terms or upon mutual agreement between the parties. Therefore, it is difficult to predict with certainty the amount of backlog that will ultimately result in revenue. The determination of backlog includes objective and subjective judgment about the likelihood of an order contract becoming revenue. We perform a quarterly review of backlog to verify that outstanding orders in backlog remain valid, and based upon this review, orders that are no longer expected to result in revenue are removed from backlog. Among other criteria to consider for a transaction to be in backlog, we must possess both an outstanding and effective written agreement for the delivery of a MRIdian signed by a customer with a minimum customer deposit or a letter of credit requirement except when the sale is to a customer where a deposit is not deemed necessary or customary (i.e. sale to a government entity, a large hospital, group of hospitals or cancer care group that has sufficient credit, sales via tender awards, or indirect channel sales that have signed contracts with end-customers). We decide whether to remove or add back an order from or to our backlog by evaluating the following criteria: changes in customer or distributor plans or financial conditions; the customer’s or distributor’s continued intent and ability to fulfill the order contract; changes to regulatory requirements; the status of regulatory approval required in the customer’s jurisdiction, if any; the length of time the order has been on our backlog; and other reasons for potential cancellation of order contracts.

During the years ended December 31, 2022, 2021 and 2020, our new orders were $191.0 million, $158.9 million and $94.6 million, respectively. Based on our assessment, we removed $36.4 million, $30.4 million and $36.1 million from the backlog for fiscal years 2022, 2021 and 2020, respectively. At December 31, 2022, we had a backlog with a total value of $380.2 million.

Components of Statements of Operations

Revenue

Product Revenue. Product revenue consists of revenue recognized from sales of MRIdian systems, as well as optional components, such as additional planning workstations and body coils.

Following execution of an order contract, it generally takes nine to 15 months for a customer to customize an existing facility or construct a new vault for the purchased system. Upon the commencement of installation at a customer’s facility, it typically takes approximately 45 to 60 days to complete the installation and on-site testing of the system, including the completion of customer test procedures. On-site training can take up to multiple weeks and can be conducted concurrently with installation and acceptance testing. Order contracts generally include customer deposits upon execution of the agreement, and in certain cases, additional amounts due at shipment or commencement of installation, and final payment due generally upon customer acceptance.

The Company recognizes revenue for the system at the point in time when delivery and inspection has occurred and installation revenue over a period of time as control of the installation services is transferred. For all contracts in which control transfers upon post-installation customer acceptance, revenue for the system and installation will continue to be recognized upon customer acceptance. For sales of MRIdian systems for which we are not responsible for installation, revenue is recognized when the entire system is delivered, which is when the control of the system is transferred to the customer.

Service Revenue. Our contracts typically include a twelve-month warranty. In addition, we offer multi-year, post-installation maintenance and support contracts that provide various levels of service support, which enables our customers to select the level of on-going support services, including parts and labor, which they require. These post-installation contracts are for a period of one to five years and provide services ranging from on-site parts and labor, and preventative maintenance to labor only with a longer response time. We also offer technology upgrades to our MRIdian systems, when and if available, for an additional fee. Service revenue is recognized ratably over the term during which the contracted services are provided.

Distribution Rights Revenue. In December 2014, we entered into a distribution agreement with Itochu Corporation, or Itochu, pursuant to which we appointed Itochu as our exclusive distributor for the promotion, sale and delivery of MRIdian products within Japan. As consideration for the exclusive distribution rights granted, we received $4.0 million, which was recorded as deferred revenue. Beginning in August 2016, distribution rights revenue has been recognized ratably over the remaining term of the distribution agreement, which expires in December 2023. A time-elapsed method is used to measure progress because the control is transferred evenly over the contractual period.

Cost of Revenue

Product Cost of Revenue. Product cost of revenue primarily consists of the cost of materials, installation and services associated with the manufacturing and installation of MRIdian systems, and royalty payments to the University of Florida Research Foundation. Product cost of revenue also includes lower of cost or net realizable value inventory, or LCNRV, adjustments if the carrying value of the inventory is greater than its net realizable value. We recorded LCNRV charges of nil, $0.9 million and $0.2 million for the years ended December 31, 2022, 2021, and 2020, respectively.

We expect our materials, installation and service costs to decrease as we continue to scale our operations, improve product designs and work with our third-party suppliers to lower costs. We expect to continue to lower costs and increase sales prices over the coming years.

Service Cost of Revenue. Service cost of revenue is comprised primarily of personnel costs, training and travel expenses to service and perform maintenance on installed MRIdian systems. Service cost of revenue also includes the costs of replacement parts under maintenance and support contracts.

Operating Expenses

Research and Development. Research and development expenses consist primarily of compensation and related costs for personnel, including stock-based compensation, employee benefits and travel expenses. Other significant research and development costs arise from third-party consulting services, laboratory supplies, research materials, medical equipment, computer equipment and licensed technology, and related depreciation and amortization. We expense research and development costs as incurred. As we continue to invest in improving MRIdian and developing new technologies, we expect our research and development expenses to increase.

Selling and Marketing. Selling and marketing expenses consist primarily of compensation and related costs for our direct sales force, sales management, and marketing and customer support personnel, and include stock-based compensation, employee benefits and travel expenses. Selling and marketing expenses also include costs related to trade shows and marketing programs. We expense selling and marketing costs as incurred. We expect selling and marketing expenses to increase in future periods as we expand our sales force and our marketing and customer support organizations and increase our participation in trade shows and marketing programs.

General and Administrative. Our general and administrative expenses consist primarily of compensation and related costs for our operations, finance, human resources, regulatory, and other administrative personnel, and include stock-based compensation, employee benefits and travel expenses. In addition, general and administrative expenses include third-party consulting, legal, audit, accounting services, quality and regulatory functions and facilities costs, and gain or loss on the disposal of property and equipment. We expect our general and administrative expenses to increase as our business grows and as we invest in the development of our MRIdian Linac.

Impairment Charges. We assess our right-of-use (“ROU”) assets for impairment when there are indicators and compare the carrying amount of the ROU asset to its estimated undiscounted future cash flows. If the estimated undiscounted future cash flows are less than the carrying amount of the ROU asset, an impairment calculation is performed. An impairment loss is recorded for the difference of the ROU asset’s carrying value that exceeds its estimated discounted cash flows. In connection with our sublease of one of our Mountain View, California office space locations, we recorded an impairment charge of $1.5 million on our ROU asset and $0.3 million on the related furniture and fixtures in 2022.

Interest Income

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

Interest Expense

Interest expense consists primarily of interest and amortization related to our indebtedness.

Other Income (Expense), Net

Other (expense) income, net consists primarily of changes in the fair value of the warrants to purchase 1,720,512 shares of common stock that we issued in a private placement in January 2017 (the "2017 Placement Warrants") and the warrants to purchase 1,380,745 shares of common stock that we issued in a private placement in August 2016 (the "2016 Placement Warrants") and foreign currency exchange gains and losses.

The outstanding 2017 and 2016 Placement Warrants are re-measured to fair value at each balance sheet date with the corresponding gain or loss from the adjustment recorded as a component of other (expense) income, net.

Additional Financial Measures

We regularly review a number of metrics to evaluate our business, measure our progress and make strategic decisions. Adjusted EBITDA (the "non-GAAP financial measure") is currently utilized by management and may be used by our competitors to assess performance. We believe this measure assists our investors in gaining a meaningful understanding of our performance. Because not all companies use identical calculations, our presentation of this measure may not be comparable to other similarly titled measures of other companies. Refer "Non-GAAP Financial Measure" below for a definition and a reconciliation of net loss to adjusted EBITDA.

Results of Operations

The analysis presented below is organized to provide the information we believe will be helpful for understanding of our historical performance and relevant trends going forward and should be read in conjunction with our consolidated financial statements, including the notes thereto, in Part II, Item 8 "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K. Also included in the following analysis are measures that are not in accordance with U.S. GAAP. A reconciliation of the non-GAAP measures to U.S. GAAP is provided below.

The following tables set forth our results of operations for the periods presented (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Revenue:			
Product	$ 79,325	$ 51,865	$ 42,742
Service	22,368	17,779	13,800
Distribution rights	513	475	475
Total revenue	102,206	70,119	57,017
Cost of revenue:			
Product	71,238	51,780	49,347
Service	20,923	18,004	11,729
Total cost of revenue	92,161	69,784	61,076
Gross profit (loss)	10,045	335	(4,059)
Operating expenses:			
Research and development	32,431	31,849	25,008
Selling and marketing	30,488	16,044	15,181
General and administrative	52,437	56,091	61,729
Impairment charges	1,816	—	—
Total operating expenses	117,172	103,984	101,918
Loss from operations	(107,127)	(103,649)	(105,977)
Interest income	1,686	13	791
Interest expense	(5,057)	(4,241)	(3,307)
Other income (expense), net	3,168	(2,171)	585
Loss before provision for income taxes	(107,330)	(110,048)	(107,908)
Provision for income taxes	—	—	—
Net loss	$ (107,330)	$ (110,048)	$ (107,908)

Comparison of the years ended December 31, 2022 and 2021

Revenue

	Year Ended December 31,			
	2022	2021	Change ($)	Change (%)
	(in thousands)			
Product	$ 79,325	$ 51,865	$ 27,460	52.9 %
Service	22,368	17,779	4,589	25.8 %
Distribution rights	513	475	38	8.0 %
Total revenue	102,206	70,119	32,087	45.8 %

Total revenue during the year ended December 31, 2022 increased by $32.1 million, or 45.8% compared to the year ended December 31, 2021. The increase was due to an increase in product revenue of $27.5 million as well as an increase in service revenue of $4.6 million during the year ended December 31, 2022 as compared to December 31, 2021.

Product Revenue. Product revenue increased by $27.5 million, or 52.9%, in fiscal year 2022 compared to fiscal year 2021. The increase was primarily attributable to additional MRIdian Linac systems recognized as revenue in fiscal

year 2022 as compared to fiscal year 2021. The Company recognized revenue for 16 MRIdian Linac systems, including one upgrade, during the fiscal year 2022, as compared to 10 MRIdian Linac systems during the fiscal year 2021.

Service Revenue. Service revenue increased by $4.6 million, or 25.8%, in fiscal year 2022 compared to fiscal year 2021 primarily due to the increase in installed base.

Cost of Revenue

	Year Ended December 31,			
	2022	2021	Change ($)	Change (%)
	(in thousands)			
Product	$ 71,238	$ 51,780	$ 19,458	37.6 %
Service	20,923	18,004	2,919	16.2 %
Total cost of revenue	92,161	69,784	22,377	32.1 %

Product Cost of Revenue. Product cost of revenue increased by $19.5 million, or 37.6%, in fiscal year 2022 compared to fiscal year 2021. The increase was primarily attributable to the additional MRIdian Linac systems recognized in fiscal year 2022 as compared to fiscal year 2021.

Service Cost of Revenue. Service cost of revenue increased by $2.9 million, or 16.2%, in fiscal year 2022 compared to fiscal year 2021. The increase in service cost of revenue was primarily due to the increase in installed base.

Operating Expenses

	Year Ended December 31,			
	2022	2021	Change ($)	Change (%)
	(in thousands)			
Research and development	$ 32,431	$ 31,849	$ 582	1.8 %
Selling and marketing	30,488	16,044	14,444	90.0 %
General and administrative	52,437	56,091	(3,654)	(6.5)%
Impairment charges	1,816	—	1,816	100.0 %
Total operating expenses	117,172	103,984	13,188	12.7 %

Research and Development. Research and development expenses increased by $0.6 million, or 1.8%, in fiscal year 2022 compared to fiscal year 2021. This increase was a result of increased personnel expenses related to clinical studies, partially offset by a decrease in consulting expenses.

Selling and Marketing. Selling and marketing expenses increased by $14.4 million, or 90.0%, in fiscal year 2022 compared to fiscal year 2021. This increase was primarily attributable to a $9.9 million increase in personnel expenses as a result of the expansion of the sales team and an increase in commission compensation due to higher order volume and revenue in 2022. Additionally, there was a $4.3 million increase in travel and marketing expenses for in-person events.

General and Administrative. General and administrative expenses decreased by $3.7 million, or 6.5%, in fiscal year 2022 compared to fiscal year 2021. This decrease was primarily attributable to a $3.7 million decrease in stock compensation expense due to a one-time expense recognized during 2021.

Impairment Charges. In 2022, the Company recorded impairment charges of $1.8 million on its ROU asset and related furniture and fixtures in connection with its sublease of one of its Mountain View, California office space locations.

Interest Income

	Year Ended December 31,			
	2022	2021	Change ($)	Change (%)
	(in thousands)			
Interest income	$ 1,686	$ 13	$ 1,673	12,869.2 %

Interest income increased by $1.7 million in fiscal year 2022 compared to fiscal year 2021 due to an overall increase in interest rates during 2022.

Interest Expense

	Year Ended December 31,			
	2022	2021	Change ($)	Change (%)
	(in thousands)			
Interest expense	$ (5,057)	$ (4,241)	$ (816)	19.2 %

Interest expense increased by $0.8 million in fiscal year 2022 compared to fiscal year 2021. The increase in interest expense is due to an increase in interest rates combined with higher principal amounts following the debt amendment that occurred in June 2022 and the entry into the Credit Agreement in November 2022.

Other Income (Expense), Net

	Year Ended December 31,			
	2022	2021	Change ($)	Change (%)
	(in thousands)			
Other income (expense), net	$ 3,168	$ (2,171)	$ 5,339	245.9 %

Other income (expense), net for fiscal year 2022 consisted primarily of a $2.6 million decrease in the fair value of warrant liabilities related to the 2017 and 2016 Placement Warrants. Other income (expense), net for fiscal year 2021 consisted primarily of a $2.3 million increase in the fair value of warrant liabilities related to the 2017 and 2016 Placement Warrants.

Non-GAAP Adjusted EBITDA

	Year Ended December 31,			
	2022	2021	Change ($)	Change (%)
Non-GAAP adjusted EBITDA	$ (78,230)	$ (73,681)	$ (4,549)	(6.2)%

Non-GAAP adjusted EBITDA for the full year 2022 was a loss of $78.2 million compared to a loss of $73.7 million for the full year 2021. We define adjusted EBITDA as EBITDA (defined as net income before net interest expense, depreciation, and amortization), adjusted for impairment of assets, non-cash equity-based compensation, non-cash changes in warrant liability valuations, and non-recurring costs. The change in adjusted EBTIDA was primarily attributable to the change in the warrant liabilities and the decrease in stock-based compensation, offset by a decrease in net loss and the impairment charge recognized in fiscal year 2022. Refer “Non-GAAP Financial Measure” below for the reconciliation of GAAP net loss to Non-GAAP adjusted EBITDA.

Non-GAAP Financial Measure

Management uses a non-GAAP measure of adjusted earnings before interest, taxes, depreciation, amortization and stock-based compensation (“adjusted EBITDA”). We define adjusted EBITDA as EBITDA (defined as net income before net interest expense, depreciation, and amortization), adjusted for impairment of assets, non-cash equity-based compensation, non-cash changes in warrant liability valuations, and non-recurring costs.

Adjusted EBITDA has important limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are that Adjusted EBITDA:

- does not reflect any charges for the assets being depreciated and amortized that may need to be replaced in the future;
- does not reflect the significant interest expense or the cash requirements necessary to service interest or, if any, principal payments on our debt;
- does not reflect the impact of write-downs of long-lived assets;
- does not reflect the impact of share-based compensation upon our results of operations;
- does not reflect the impact of changes in fair value of our warrant liabilities; and
- does not include certain expenses that are non-recurring, infrequent and unusual in nature.

The following table provides a reconciliation of adjusted EBITDA to net income, the most directly comparable GAAP measure, for each of the periods presented:

Reconciliation of GAAP Net Loss to Adjusted EBITDA (in thousands)	Year Ended December 31,	
	2022	2021
GAAP net loss	$ (107,330)	$ (110,048)
Depreciation and amortization	4,922	5,984
Stock-based compensation	21,608	23,871
Interest expense	5,057	4,241
Interest income	(1,686)	(13)
Loss (gain) on fair value of warrants (a)	(2,617)	2,284
Impairment (b)	1,816	—
Adjusted EBITDA	(78,230)	(73,681)

(a) consists of non-cash gain/losses related to our 2017 and 2016 Placement Warrants.
(b) consists of a one-time non-cash impairment charge on the right-of-use assets and related furniture and fixtures of one of our Mountain View, California office space locations.

Liquidity and Capital Resources

Since our inception in 2004, we have incurred significant net losses and negative cash flows from operations. During the years ended December 31, 2022, 2021 and 2020, we had a net loss of $107.3 million, $110.0 million and $107.9 million, respectively. At December 31, 2022 we had an accumulated deficit of $844.5 million.

At December 31, 2022 and 2021, we had a cash and cash equivalents and restricted cash balance of $142.5 million and $219.8 million, respectively. To date, we have financed our operations principally through offerings of our capital stock, issuances of warrants, use of term loans and our new revolving credit facility, receipts of customer deposits for new orders, and payments from customers for systems installed and delivered. We may, from time to time, seek to raise capital through a variety of sources, including the public equity market, private equity financing, and public or private debt.

We expect that our existing cash and cash equivalents, together with proceeds from the sales of MRIdian systems, will be adequate to meet anticipated working capital needs, anticipated levels of capital expenditures, and contractual obligations for at least the next twelve months. However, we continue to critically review our liquidity and anticipated capital requirements in light of the significant uncertainty created by the COVID-19 pandemic and current economic conditions.

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

The following table summarizes our cash flows for the periods presented (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Cash used in operating activities	$ (91,708)	$ (62,091)	$ (63,474)
Cash used in investing activities	(3,898)	(1,559)	(6,183)
Cash provided by (used in) financing activities	18,293	125,278	(350)

Operating Activities

We have historically experienced cash outflows as we developed MRIdian with Cobalt-60 and MRIdian Linac and expanded our business. Our primary source of cash flow from operating activities is cash receipts from customers including sales of MRIdian systems and, to a lesser extent, up-front payments from customers. Our primary uses of cash in operating activities are amounts due to vendors for purchased components and employee-related expenditures.

During fiscal year 2022, cash used in operating activities was $91.7 million, resulting from our net loss of $107.3 million, offset by a net change of $10.3 million in our working capital, and the aggregate non-cash charges of $25.9 million.

During fiscal year 2021, cash used in operating activities was $62.1 million, resulting from our net loss of $110.0 million, offset by a net change $12.9 million in our working capital, and the aggregate non-cash charges of $35.0 million.

Investing Activities

Cash used in investing activities during the year ended December 31, 2022 and 2021 of $3.9 million and $1.6 million, respectively, primarily resulted from capital expenditures to purchase property and equipment.

Financing Activities

During the year ended December 31, 2022, net cash provided by financing activities was $18.3 million, which consisted of net proceeds from debt modifications of $20.1 million, proceeds from the exercise of stock options of $0.1 million, and proceeds from the employee stock purchase plan of $0.6 million, partially offset by the cash used to pay taxes related to net share settlement of equity awards of $2.6 million.

During the year ended December 31, 2021, net cash provided by financing activities was $125.3 million, which consisted of net proceeds from the January and November common stock public offerings of $128.6 million, proceeds from the exercise of stock options of $0.8 million, and proceeds from the employee stock purchase plan of $0.6 million, partially offset by the cash used to pay taxes related to net share settlement of equity awards of $4.6 million.

Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States ("U.S. GAAP") which requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. These estimates and assumptions are based on historical experience and on various other factors that we believe are reasonable under the circumstances. We evaluate our estimates and assumptions on an ongoing basis.

In addition to the accounting policies that are more fully described in the Notes to the Consolidated Financial Statements included in this Annual Report on Form 10-K, we consider the critical accounting policies described below to be affected by critical accounting estimates, and those estimates have the greatest potential impact on our consolidated financial statements. Such accounting policies require us to use judgments, often as a result of the need to make estimates and assumptions regarding matters that are inherently uncertain, and actual results could differ from these estimates.

Revenue Recognition

Our revenues are derived primarily from the sale of MRIdian systems, installation of the MRIdian system, and support and maintenance services on sold systems. The MRIdian system and installation of the MRIdian system are considered two distinct performance obligations.

For contracts in which control of the system transfers upon delivery and inspection, the Company recognizes revenue for the systems at the point in time when delivery and inspection by the customer has occurred. For these same contracts, the Company recognizes installation revenue over the period of installation as the installation services are performed and control is transferred to the customer. For all contracts in which control continues to transfer upon post-implementation customer acceptance, revenue for the system and installation is recognized upon customer acceptance.

Certain customer contracts with distributors do not require ViewRay installation at the ultimate user site, and the distributors may either perform the installation themselves or hire another party to perform the installation. For sales of MRIdian systems for which the Company is not responsible for installation, revenue recognition occurs when the system is shipped, which is when the control of the system is transferred to the customer.

For sales of the related support and maintenance services, a time-elapsed method is used to measure progress toward complete satisfaction of performance obligations and service revenue is recognized ratably over the service contract term, which is typically 12 months.

We frequently enter into sales arrangements that contain multiple performance obligations including MRIdian system and product support. Judgments as to the standalone selling price and allocation of consideration from an arrangement to the individual performance obligations, and the appropriate timing of revenue recognition are critical with respect to these arrangements. Changes to the performance obligations can impact the arrangement and amounts allocated to each performance obligation could affect the timing and amount of revenue recognition.

Stock-Based Compensation

Stock-based compensation expense is measured and recognized in the consolidated financial statements based on the fair value of the awards granted. We use the Black-Scholes option-pricing model to estimate the fair value of our stock-based awards including: restricted stock units ("RSUs"), deferred stock units ("DSUs"), performance share units (“PSUs”), employee stock purchase plan ("ESPP"), and stock options. This valuation model requires the input of highly subjective assumptions, the most significant of which is our estimates of expected volatility and the forfeiture rate of the award. The Company determines volatility based on the Company’s own historical volatility measurements. The forfeiture rate of stock awards is estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Forfeitures have been estimated by the Company based upon historical and expected forfeiture experience.

Furthermore, PSUs are based on our corporate financial performance targets of the Company’s compound annual revenue growth rate over a three-year period. The number of PSUs that will ultimately be awarded are contingent on our actual level of achievement compared to the corporate financial target performance targets.

The assumptions used in calculating the fair value of stock-based payment awards represent management’s best estimates. These estimates involve inherent uncertainties and the application of management’s judgment. If factors change and different assumptions are used, our stock-based compensation expense could be materially different in the future.

Common Stock Warrants

We issued the 2017 and 2016 Placement Warrants in connection with the 2017 and 2016 Private Placements. The 2017 and 2016 Placement Warrants were accounted for as a liability with subsequent changes in fair value recorded in other income (expenses), net at each reporting date until the warrants are exercised or expired. The Company valued the 2017 and 2016 Placement Warrants at issuance using the Black-Scholes option pricing model and determined the fair value. The key inputs to the valuation model included expected volatility, risk-free rate, and an expected term.

Inventory Valuation

Inventory consists primarily of purchased components for assembling MRIdian systems and other direct costs associated with MRIdian system installation. Inventory is stated at the lower of cost or net realizable value. When the net realizable value of inventory is lower than related costs, we reduce the carrying value of inventory for the difference while recording a corresponding charge to cost of product revenues. The assumptions we used in estimating the net realizable value of the inventory primarily include the total cost to complete the applicable MRIdian system.

Recently Issued and Adopted Accounting Pronouncements

We review new accounting standards to determine the expected financial impact, if any, that the adoption of each such standard will have. For the recently issued accounting standards that we believe may have an impact on our consolidated financial statements, see the section entitled “Notes to Consolidated Financial Statements – Note 2 – Summary of Significant Accounting Policies” in the consolidated financial statements.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We were a smaller reporting company, as defined in Rule 12b-2 of the Exchange Act, for the fiscal year ended December 31, 2022 and we therefore are not required to provide the information required under this item.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

VIEWRAY, INC.
Index to Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of ViewRay Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of ViewRay Inc. and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations and comprehensive loss, convertible preferred stock and stockholders' equity, and cash flows, for each of the three years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

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

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

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

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current-period audit of the financial statements that was communicated or required to be communicated to the audit committee and that (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Revenue Recognition – Refer to Notes 2 and 7 in the Consolidated Financial Statements

Critical Audit Matter Description

Product revenue is derived from the sale of the MRIdian system and related services. Generally, each MRIdian contract contains multiple performance obligations. Such performance obligations mainly consist of (i) sale of the MRIdian system, which generally includes installation and embedded software, and (ii) product support, which includes extended service and maintenance. For such arrangements, the Company allocates revenue to each performance obligation based on its relative standalone selling price. The standalone selling price, or SSP, is determined based on observable prices at which the Company separately sells the products and services. If a SSP is not directly observable, the Company will estimate the SSP considering market conditions or internally approved pricing guidelines related to the performance obligations. Total product and service revenue recognized in the year ended December 31, 2022 was $79 million and $22 million, respectively.

We identified revenue recognition as a critical audit matter due to the management judgment involved in the determination of each performance obligation and the allocation of revenue to each performance obligation. Performing audit procedures to evaluate management’s judgments in identifying performance obligations within a revenue arrangement as well as the judgements as to the SSP and allocation of consideration from a revenue arrangement to the individual performance obligations requires a high degree of auditor judgment due to the unique nature of each of the contracts and the multiple performance obligations included.

How the Critical Audit Matter was Addressed in the Audit

Our audit procedures related to revenue recognition included the following, among others:

- For each product revenue transaction tested which occurred during the year ended December 31, 2022, we analyzed the terms of the contracts to determine that all performance obligations were identified appropriately by management and considered by management in the revenue recognition allocation calculations utilized to record revenue. Additionally, we tested the allocation of the transaction price to each performance obligation to determine management recorded the revenue accurately and in the appropriate period.
- We evaluated the Company’s SSP analysis by analyzing inputs used in developing the SSP (i.e., agreeing to underlying observable prices, where applicable, or by evaluating the reasonableness of the methods and assumptions including observable prices, market conditions or internally approved pricing guidelines used by management to estimate the SSP), to determine if the SSP is appropriate for each performance obligation.
- We evaluated management’s ability to estimate the SSP by performing a retrospective review of the assumptions (observable prices, market conditions or internally approved pricing guidelines) utilized by management in determining SSP.

/s/Deloitte & Touche LLP
Denver, CO
February 28, 2023

We have served as the Company's auditor since 2012.

VIEWRAY, INC.
Consolidated Balance Sheets
(In thousands, except share and per share data)

	December 31, 2022	December 31, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	$ 135,960	$ 218,348
Accounts receivable, net	41,383	21,659
Inventory, net of allowance of $1,522 and $3,071, respectively	31,303	29,617
Deposits on purchased inventory	7,484	4,778
Deferred cost of revenue	6,715	3,342
Prepaid expenses and other current assets	5,509	5,803
Total current assets	228,354	283,547
Property and equipment, net	19,641	20,242
Restricted cash	6,535	1,460
Intangible assets, net	38	44
Right-of-use assets	5,945	9,661
Other assets	10,884	6,853
TOTAL ASSETS	$ 271,397	$ 321,807
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 28,300	$ 9,199
Accrued liabilities	24,682	26,555
Customer deposits	16,006	20,784
Operating lease liability, current	2,860	2,561
Current portion of long-term debt	—	3,222
Deferred revenue, current portion	24,734	13,920
Total current liabilities	96,582	76,241
Deferred revenue, net of current portion	3,069	4,232
Long-term debt	73,339	54,031
Credit revolver	5,000	—
Warrant liability	4,178	6,795
Operating lease liability, noncurrent	5,205	8,066
Other long-term liabilities	1,782	2,647
TOTAL LIABILITIES	189,155	152,012
Commitments and contingencies (Note 6)		
Stockholders' equity:		
Preferred stock, par value $0.01 per share; 10,000,000 shares authorized at December 31, 2022 and 2021; no shares issued and outstanding at December 31, 2022 and 2021	—	—
Common stock, par value of $0.01 per share; 300,000,000 shares authorized at December 31, 2022 and 2021; 181,586,944 and 179,206,456 shares issued and outstanding at December 31, 2022 and 2021	1,806	1,782
Additional paid-in capital	924,898	905,145
Accumulated deficit	(844,462)	(737,132)
TOTAL STOCKHOLDERS' EQUITY	82,242	169,795
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$ 271,397	$ 321,807

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

VIEWRAY, INC.
Consolidated Statements of Operations and Comprehensive Loss
(In thousands, except share and per share data)

	Year Ended December 31,		
	2022	2021	2020
Revenue:			
Product	$ 79,325	$ 51,865	$ 42,742
Service	22,368	17,779	13,800
Distribution rights	513	475	475
Total revenue	102,206	70,119	57,017
Cost of revenue:			
Product	71,238	51,780	49,347
Service	20,923	18,004	11,729
Total cost of revenue	92,161	69,784	61,076
Gross profit (loss)	10,045	335	(4,059)
Operating expenses:			
Research and development	32,431	31,849	25,008
Selling and marketing	30,488	16,044	15,181
General and administrative	52,437	56,091	61,729
Impairment charges	1,816	—	—
Total operating expenses	117,172	103,984	101,918
Loss from operations	(107,127)	(103,649)	(105,977)
Interest income	1,686	13	791
Interest expense	(5,057)	(4,241)	(3,307)
Other income (expense), net	3,168	(2,171)	585
Loss before provision for income taxes	$ (107,330)	$ (110,048)	$ (107,908)
Provision for income taxes	—	—	—
Net loss attributable to common stockholders, basic and diluted	$ (107,330)	$ (110,048)	$ (107,908)
Net loss per share, basic and diluted	$ (0.59)	$ (0.67)	$ (0.73)
Weighted-average common shares used to compute net loss per share attributable to common stockholders, basic and diluted	180,697,230	164,521,064	147,895,561

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

VIEWRAY, INC.
Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity
(In thousands, except share data)

	Convertible Preferred Stock			Common Stock				
	Shares	Amount	Additional Paid-in Capital	Shares	Amount	Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
Balance at December 31, 2019	—	$ —	$ —	147,191,695	$ 1,462	$ 733,888	$ (519,176)	$ 216,174
Issuance of common stock from option exercises	—	—	—	20,579	—	15	—	15
Issuance of common stock from releases of restricted stock units	—	—	—	1,214,786	12	(12)	—	—
Tax withholding paid on behalf of employees for stock-based awards	—	—	—	—	—	(1,376)	—	(1,376)
Stock-based compensation	—	—	—	—	—	22,805	—	22,805
Issuance of common stock from employee stock purchase plan	—	—	—	188,291	2	363		365
Write-down of offering costs related to previous issuance of common stock upon public offering	—	—	—	—	—	191	—	191
Net loss	—	—	—	—	—	—	(107,908)	(107,908)
Balance at December 31, 2020	—	$ —	$ —	148,615,351	$ 1,476	$ 755,874	$ (627,084)	$ 130,266
Issuance of common stock from option exercises	—	—	—	156,199	3	772	—	775
Issuance of common stock from releases of restricted stock units	—	—	—	4,015,380	40	(40)	—	—
Tax withholding paid on behalf of employees for stock-based awards	—	—	—	—	—	(4,600)	—	(4,600)
Stock-based compensation	—	—	—	—	—	23,871	—	23,871
Issuance of common stock upon public offerings (net of offering cost of $9,334)	—	—	—	26,231,500	262	128,364	—	128,626
Issuance of common stock from employee stock purchase plan	—	—	—	142,974	1	549		550
Fair value of warrants upon exercise	—	—	—	—	—	352	—	352
Issuance of common stock from warrant exercise (net exercise)	—	—	—	44,287	—	—	—	—
Issuance of common stock from warrant exercise (cash exercise)	—	—	—	765	—	3		3
Net loss	—	—	—	—	—	—	(110,048)	(110,048)
Balance at December 31, 2021	—	$ —	$ —	179,206,456	$ 1,782	$ 905,145	$ (737,132)	$ 169,795
Issuance of common stock from option exercises	—	—	—	28,812	—	79	—	79
Issuance of common stock from releases of restricted stock units	—	—	—	2,066,469	20	(20)	—	—
Tax withholding paid on behalf of employees for stock-based awards	—	—	—	—	—	(2,554)	—	(2,554)
Stock-based compensation	—	—	—	—	—	21,608	—	21,608
Issuance of common stock from employee stock purchase plan	—	—	—	285,207	4	640	—	644
Net loss	—	—	—	—	—	—	(107,330)	(107,330)
Balance at December 31, 2022	—	$ —	$ —	181,586,944	$ 1,806	$ 924,898	$ (844,462)	$ 82,242

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

VIEWRAY, INC.
Consolidated Statements of Cash Flows
(In thousands)

	Year Ended December 31,		
	2022	**2021**	**2020**
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net loss	$ (107,330)	$ (110,048)	$ (107,908)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	4,922	5,984	6,419
Stock-based compensation	21,608	23,871	22,805
Accretion on asset retirement obligation	95	105	63
Change in fair value of warrant liability	(2,617)	2,284	(509)
Loss on disposal of property and equipment	—	—	139
Inventory lower of cost and net realizable value adjustment	—	883	150
Provision for losses on accounts receivable	305	—	—
Amortization of debt discount and interest accrual	923	919	729
Write off of deferred financing fees	497	—	—
Impairment of ROU asset and related fixed assets	1,816	— —	—
Product upgrade reserve	(1,600)	1,000	(2,294)
Changes in operating assets and liabilities:			
Accounts receivable	(20,029)	(9,890)	5,048
Inventory	(1,554)	15,565	8,240
Deposits on purchased inventory	(2,706)	(2,694)	4,373
Deferred cost of revenue	(3,373)	(1,388)	(186)
Prepaid expenses and other assets	(4,144)	(5,550)	(1,356)
Accounts payable	18,402	(746)	(3,352)
Accrued expenses and other long-term liabilities	(1,796)	6,807	(292)
Customer deposits and deferred revenue	4,873	10,807	4,457
Net cash used in operating activities	(91,708)	(62,091)	(63,474)
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchase of property and equipment	(3,898)	(1,559)	(6,183)
Net cash used in investing activities	(3,898)	(1,559)	(6,183)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from Revolving Credit Facility	5,000	—	—
Proceeds from term loan modification	77,000	—	2,000
Payment of SVB term loan	(60,000)	—	—
Payment of debt issuance costs	(1,874)	—	(815)
Proceeds from common stock public offerings, gross	—	137,884	—
Payment of offering costs related to common stock public offerings	—	(9,334)	(539)
Proceeds from employee stock purchase plan	644	550	365
Proceeds from the exercise of stock options	79	775	15
Proceeds from the exercise of warrants	—	3	—
Payments for taxes related to net share settlement of equity awards	(2,556)	(4,600)	(1,376)
Net cash provided by (used in) financing activities	18,293	125,278	(350)
NET (DECREASE) INCREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH	(77,313)	61,628	(70,007)
CASH, CASH EQUIVALENTS AND RESTRICTED CASH — BEGINNING OF PERIOD	219,808	158,180	228,187
CASH, CASH EQUIVALENTS AND RESTRICTED CASH — END OF PERIOD	$ 142,495	$ 219,808	$ 158,180
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:			
Cash paid for interest	$ 4,628	$ 3,323	$ 3,262
Cash paid for taxes	$ —	$ —	$ 43
SUPPLEMENTAL NON-CASH INVESTING AND FINANCING ACTIVITIES:			
Fair value of common stock warrants reclassed from liability to additional paid-in capital upon exercise	$ —	$ 352	$ —
Right-of-use assets obtained in exchange for new operating lease liabilities	$ —	$ 1,693	$ 643
Transfer of property and equipment from inventory	$ 132	$ 576	$ 1,698
Purchase of property and equipment in accounts payable and accrued expenses	$ 726	$ 82	$ 59
Offering costs included in accounts payable and accrued expenses	$ —	$ 25	$ 460

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

VIEWRAY, INC.
Notes to Consolidated Financial Statements

1. Background and Organization

ViewRay, Inc. ("ViewRay" or the "Company"), and its wholly-owned subsidiary ViewRay Technologies, Inc., designs, manufactures and markets MRIdian, an MR Image-Guided radiation therapy system to simultaneously image and treat cancer patients.

Since inception, ViewRay Technologies, Inc. has devoted substantially all of its efforts towards research and development, selling and marketing activities, raising capital and the manufacturing, shipment and installation of MRIdian systems. In May 2012, ViewRay Technologies, Inc. was granted clearance from the U.S. Food and Drug Administration (“FDA”), to sell MRIdian with Cobalt-60. In November 2013, ViewRay Technologies, Inc. received its first clinical acceptance of a MRIdian with Cobalt-60 at a customer site, and the first patient was treated with that system in January 2014. ViewRay Technologies, Inc. has had the right to affix the CE mark to MRIdian with Cobalt-60 in the European Economic Area ("EEA") since November 2014. In September 2016, the Company received the rights to affix the CE mark to MRIdian Linac, and in February 2017, the Company received 510(k) clearance from the FDA to market MRIdian Linac. In February 2019, the Company received 510(k) clearance from the FDA for advancements in MRI, 8 frames per second cine, and Functional imaging (T1/T2/DWI) and High-Speed MLC. In December 2019, we received the CE mark for these advancements in the EEA. In December 2021, the Company received 510(k) clearance from the FDA on its recent submission for new MRIdian features ("MRIdian A3i") focused on enhancing on-table adaptive workflow efficiency and expanding clinical utility. In September 2022, the Company received approval to market the MRIdian system in China from the National Medical Products Administration ("NMPA").

The Company’s consolidated financial statements have been prepared on the basis of the Company continuing as a going concern for a reasonable period of time. The Company’s principal sources of liquidity are cash flows from public and private share offerings and available borrowings under its term loan agreement, as well as cash receipts from its sales of MRIdian systems. These have historically been sufficient to meet working capital needs, capital expenditures, and debt service obligations. During the year ended December 31, 2022, the Company incurred a net loss from operations of $107.3 million and used cash in operations of $91.7 million. The Company believes that its existing cash and cash equivalents and restricted cash balance of $142.5 million as of December 31, 2022, together with anticipated cash proceeds from sales of MRIdian systems will be sufficient to provide liquidity to fund its operations for at least the next 12 months.

2. Summary of Significant Accounting Policies

Basis of Presentation

The consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States (“U.S. GAAP”), and pursuant to the rules and regulations of the Securities and Exchanges Commission (the "SEC"). The consolidated financial statements include the accounts of ViewRay, Inc. and its wholly-owned subsidiary, ViewRay Technologies, Inc. All inter-company accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported and disclosed in the consolidated financial statements and accompanying notes. Such estimates include, but are not limited to, allocation of revenue to multiple performance obligations within an arrangement, allowance for expected credit losses, inventory write-downs to reflect net realizable value, assumptions used in the valuation of stock-based awards and warrant liability, and valuation allowances against deferred tax assets. Actual results could differ from these estimates.

Cash and Cash Equivalents

The Company considers all highly liquid investments purchased with an original maturity of three months or less to be cash equivalents. The Company deposits its cash primarily in checking and money market accounts. The carrying amounts of the Company’s cash equivalents approximate their fair values due to their short maturities.

Restricted Cash

At December 31, 2022 and 2021, the Company had an aggregate of $6.5 million and $1.5 million of outstanding letters of credit related to its operating leases and its contractual obligations with distributors and customers. The letters of credit are collateralized by a restricted cash deposit account, which is presented as part of noncurrent assets on the balance sheets

because the Company is not certain when the restriction will be lifted on the collateralized letters of credit. At December 31, 2022 and 2021, no amounts were drawn on the letters of credit.

Concentration of Credit Risk, Other Risks and Uncertainties

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. Cash and cash equivalents are deposited in checking and money market accounts with various financial institutions. At times, cash balances may be in excess of the amounts insured by the Federal Deposit Insurance Corporation. Management believes the financial risk associated with these balances is minimal and has not experienced any losses to date.

Additionally, the Company performs periodic credit evaluations of its customers' financial condition and generally requires deposits from its customers. The Company's accounts receivable were derived from billings to customers. The Company's customers representing greater than 10% of accounts receivable or revenue for the periods presented were as follows:

	Revenue			Accounts Receivables	
	Year Ended December 31,			December 31,	
Customers	2022	2021	2020	2022	2021
Customer A		11 %	12 %	15 %	28 %
Customer B					16 %
Customer C					16 %
Customer D					15 %
Customer E			19 %		
Customer F			11 %		
Customer G			10 %		
Customer H	10 %			26 %	
Customer I				14 %	
Customer J				12 %	

The Company's future results of operations involve a number of risks and uncertainties. Factors that could affect the Company's future operating results and cause actual results to vary materially from expectations include, but are not limited to, rapid technological change, continued acceptance of MRIdian, competition from substitute products and larger companies, protection of proprietary technology, ability to maintain distributor relationships and dependence on key individuals. Furthermore, new products to be developed by the Company require approval from the FDA or other international regulatory agencies prior to commercial sales. There can be no assurance that the Company's future products will receive the necessary clearances.

The Company relies on a concentrated number of suppliers to manufacture essentially all of the components used in MRIdian. The Company's suppliers may encounter problems during manufacturing due to a variety of reasons, including failure to comply with applicable regulations, including the FDA's Quality System Regulation, equipment malfunction and environmental factors, any of which could delay or impede our ability to meet demand.

Accounts Receivables and Allowance for Credit Losses

Accounts receivable are recorded at the invoiced amount, net of any allowance for credit losses, and do not bear interest. The allowance for credit losses, if any, is based on the assessment of the collectability of customer accounts.

There was $0.3 million and nil of allowance for credit losses recorded at December 31, 2022 and 2021, respectively.

Fair Value of Financial Instruments

Financial instruments consist of cash and cash equivalents, accounts receivable, restricted cash, prepaid expenses and other current assets, accounts payable, accrued liabilities, warrant liability and long-term debt. Cash equivalents are stated at amortized cost, which approximates fair value at the balance sheet dates, due to the short period of time to maturity. Accounts receivable, prepaid expenses and other current assets, accounts payable, and accrued liabilities are stated at their carrying value, which approximates fair value due to the short time to the expected receipt or payment date. The warrant liability is carried at fair value. The carrying amount of the Company's long-term debt approximates its fair value as the stated interest rate approximates market rates currently available to the Company.

Inventory and Deposits on Purchased Inventory

Inventory consists of purchased components for assembling MRIdian systems and other direct and indirect costs associated with MRIdian system installation. Inventory is stated at the lower of cost or net realizable value. All inventories expected to be placed in service during the normal operating cycle of the Company for the delivery and assembly of MRIdian systems, including items expected to be on hand for more than one year, are classified as current assets. Excess and obsolete inventories are written down based on historical sales and forecasted demand, as judged by management.

The Company reduces the carrying value of its inventory for the difference between cost and net realizable value and records a charge to cost of product revenues. The Company recorded an inventory lower of cost and net realizable value adjustment of nil, $0.9 million, and $0.2 million during the years ended December 31, 2022, 2021, and 2020 respectively.

The Company records inventory items which have been paid for but not yet received and for which title has not yet transferred to the Company as deposits on purchased inventory. Deposits on purchased inventory are included within current assets as the related inventory items are expected to be received and used in MRIdian systems within the Company's normal operating cycle. The Company assesses the recoverability of deposits on purchased inventory based on credit assessments of the vendors and their history supplying these assets. At December 31, 2022, the Company did not have any instances whereby deposits for purchased inventory were written off or the purchased inventory was not delivered.

Shipping and Handling Costs

Shipping and handling costs for product shipments to customers are included in cost of product revenue. Shipping and handling costs incurred for inventory purchases are capitalized in inventory and expensed in cost of product revenue.

Property and Equipment

Property and equipment are recorded at cost. Depreciation is computed over the estimated useful lives, ranging from two to 15 years, of the related assets using the straight-line method. Acquired software is recorded at cost. Amortization of acquired software generally occurs over three years using the straight-line method. Leasehold improvements are amortized on a straight-line basis over the shorter of the useful life or term of the lease. Demonstration units, which are the Company products used for demonstration purpose for customers and/or potential customers, and generally not intended to be sold, are amortized using the straight-line method.

Depreciation and amortization periods for property and equipment are as follows:

Property and Equipment	Estimated Useful Life
Prototype	2 - 10 years
Machinery and equipment	3 - 15 years
Furniture and fixture	5 - 10 years
Software	3 years
Leasehold improvements	Lesser of estimated useful life or remaining lease term

Leases

We determine if an arrangement is a lease at inception. Operating leases are included in operating lease right-of-use ("ROU") assets, and operating lease liabilities, current and noncurrent, on our consolidated balance sheets. We currently do not have any finance lease arrangements.

Operating lease ROU assets and operating lease liabilities are recognized based on the present value of the future minimum lease payments over the lease term at commencement date. As our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at commencement date of the lease in determining the present value of future payments. The operating lease ROU asset also includes any lease payments made and excludes lease incentives and initial direct costs incurred. Our lease terms may include an option to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term. Leases with an initial term of 12 months or less are not recorded on the balance sheet; we recognize lease expense for these leases on a straight-line basis over the lease term.

Asset Retirement Obligations

In connection with two lease agreements and subsequent amendments, the Company has a legal obligation to remove long-lived assets constructed on the leased properties and to restore the leased properties to their original condition. The Company records the fair value of the asset retirement obligation in the period in which it is incurred. The fair value is measured based upon the present value of the expected future payments at inception and remeasured upon the extension of the respective lease agreement. The liability is accreted to its present value each period and the capitalized cost is depreciated over the remaining lease term. Accretion expense is calculated by applying the effective interest rate to the carrying amount of the liability at the beginning of each period. The effective interest rate is the credit-adjusted risk-free rate applied when the liability was initially measured at inception and remeasured upon the lease extension, when applicable.

At December 31, 2022, the Company had outstanding asset retirement obligations of $1.1 million, which was included in other long-term liabilities in the accompanying consolidated balance sheets. For the years ended December 31, 2022, 2021 and 2020, the Company recognized accretion expenses of $95 thousand, $105 thousand and $63 thousand, respectively in the accompanying statements of operations and comprehensive loss.

Impairment of Long-Lived Assets

The Company reviews the recoverability of long-lived assets, including equipment, leasehold improvements, software and intangible assets when events or changes in circumstances occur that indicate that the carrying value of the asset may not be recoverable. The assessment of possible impairment is based on the ability to recover the carrying value of the assets from the expected future cash flows (undiscounted and without interest charge) of the related operations. If these cash flows are less than the carrying value of such assets, an impairment loss for the difference between the estimated fair value and carrying value is recorded.

During 2022, the Company recorded impairment charges of $1.5 million on its ROU asset for one of the Mountain View, California office spaces and $0.3 million on the related furniture and fixtures to reduce the carrying value to their estimated fair value in connection with the sublease discussed in Note 6. There was no impairment loss recognized during the years ended December 31, 2021 and 2020.

Revenue Recognition

The Company derives revenues primarily from the sale of MRIdian systems, installation of MRIdian systems, and support and maintenance services on sold systems. The Company accounts for revenue contracts with customers by applying the requirements of ASC 606, *Revenues from Contracts with Customers*, which includes the following steps:

- identification of the contract, or contracts, with a customer;
- identification of the performance obligations in the contract
- determination of the transaction price;
- allocation of the transaction price to the performance obligations in the contract; and
- recognition of revenue when, or as, the Company satisfies a performance obligation.

In all sales arrangements, revenues are recognized when control of the promised goods or services are transferred to customers, in an amount that reflects the consideration the Company expects to be entitled to receive in exchange for those goods or services. The MRIdian system and installation of the MRIdian system are considered two distinct performance obligations For sales of the related support and maintenance services, a time-elapsed method is used to measure progress toward complete satisfaction of performance obligations and service revenue is recognized ratably over the service contract term, which is typically 12 months. Additional details regarding revenue recognition are included in Note 7 – *Revenue*.

Research and Development Costs

Expenditures, including payroll, contractor expenses and supplies, for research and development of products and manufacturing processes are expensed as incurred.

Costs for the development of new software products and substantial enhancements to existing software products are expensed as incurred until technological feasibility has been established, at which time any additional costs would be capitalized. No costs associated with the development of software have been capitalized as the Company believes its current software development process is completed concurrent with the establishment of technological feasibility.

Stock-Based Compensation

Stock-based compensation expense for all stock-based payment awards granted is based on the grant date fair value. The Company uses the Black-Scholes option-pricing model to estimate the fair value of stock awards. The Black-Scholes option-pricing model requires the use of highly subjective assumptions (see Note 13). The fair value of the portion of the award that is ultimately expected to vest is recognized as compensation expense over the awards' requisite service periods in the consolidated statements of operations and comprehensive loss. The Company records the value of stock-based compensation to expense straight-line over the vesting period.

Deferred Commissions

Deferred commissions are the direct and incremental costs directly associated with the MRIdian system contracts with customers, which primarily consist of sales commissions to our direct sales force. The commissions are deferred and expensed in proportion to the revenue recognized upon the acceptance of the MRIdian system. At December 31, 2022 and 2021, the Company had $3.8 million and $3.3 million, respectively, in deferred commissions recorded as part of prepaid expenses and other current assets on the consolidated balance sheets.

Income Taxes

The Company uses the asset and liability method of accounting for income taxes. Deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Deferred tax expense or benefit is the result of changes in the deferred tax assets and liabilities. Valuation allowances are established when necessary to reduce deferred tax assets where, based upon the available evidence, management concludes that it is more-likely-than not that the deferred tax assets will not be realized. Because of the uncertainty of the realization of the deferred tax assets, the Company has recorded a full valuation allowance against its net deferred tax assets.

In evaluating the ability to recover its deferred income tax assets, the Company considers all available positive and negative evidence, including its operating results, ongoing tax planning and forecasts of future taxable income on a jurisdiction-by-jurisdiction basis. In the event the Company was to determine that it would be able to realize its deferred income tax assets in the future in excess of their net recorded amount, it would make an adjustment to the valuation allowance which would reduce the provision for income taxes.

Reserves are provided for tax benefits for which realization is uncertain. Such benefits are only recognized when the underlying tax position is considered more likely than not to be sustained on examination by a taxing authority, assuming they possess full knowledge of the position and facts. It is the Company's policy to include any penalties and interest related to income taxes in its income tax provision; however, the Company currently has no penalties or interest related to income taxes. The earliest year that the Company is subject to examination is the year ended December 31, 2004.

Warrant Liability

Certain warrants to purchase common stock provide for cash settlement in the event of a change in control, and are recorded as liabilities on the balance sheets at fair value upon issuance (see Note 12). These warrants are subject to re-measurement to fair value at each balance sheet date. Any changes in fair value are recognized in the consolidated statements of operations and comprehensive loss as other income (expense), net. Upon exercise of the warrants, the related warrant liability will be reclassified to additional paid-in capital.

Net Loss per Share

The Company's basic net loss attributable to common stockholders per share is calculated by dividing net loss by the weighted-average number of shares of common stock outstanding for the period. Contingently issuable shares are included in the computation of basic net loss per share as of the date that all necessary conditions have been satisfied and issuance of the shares is no longer contingent. The diluted net loss per share is computed by giving effect to all potential common stock equivalents outstanding for the period determined using the treasury stock method. For purposes of this calculation, stock options, restricted stock units and warrants to purchase common stock are considered to be common stock equivalents but have been excluded from the calculation of diluted net loss per share as their effect is anti-dilutive.

3. Balance Sheet Components

Property and Equipment, Net

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

	December 31,	
	2022	2021
Prototype	$ 17,641	$ 17,730
Machine and equipment	19,068	17,701
Leasehold improvements	15,365	14,088
Furniture and fixtures	1,511	1,295
Software	1,389	1,389
Construction in progress	2,417	1,397
Property and equipment, gross	57,391	53,600
Less: accumulated depreciation and amortization	(37,750)	(33,358)
Property and equipment, net	$ 19,641	$ 20,242

Depreciation and amortization expense related to property and equipment was $4.9 million, $6.0 million and $6.4 million during the years ended December 31, 2022, 2021 and 2020, respectively.

Accrued Liabilities

Accrued liabilities consisted of the following (in thousands):

	December 31,	
	2022	2021
Accrued payroll and related benefits	$ 15,542	$ 17,080
Accrued accounts payable	$ 5,606	$ 3,740
Payroll withholding tax, sales and other tax payable	$ 1,660	$ 1,094
Accrued legal and accounting	$ 241	$ 230
Product upgrade reserve	$ 900	$ 2,500
Other	$ 733	$ 1,911
Total accrued liabilities	$ 24,682	$ 26,555

Deferred Revenue

Deferred revenue consisted of the following (in thousands):

	December 31,	
	2022	2021
Deferred revenue:		
Product	$ 8,814	$ 1,322
Services	18,057	15,385
Distribution rights	932	1,445
Total deferred revenue	27,803	18,152
Less: current portion of deferred revenue	(24,734)	(13,920)
Noncurrent portion of deferred revenue	$ 3,069	$ 4,232

Other Long-Term Liabilities

Other long-term liabilities consisted of the following (in thousands):

	December 31,	
	2022	2021
Accrued interest, noncurrent portion	$ 96	$ 704
Asset retirement obligation	1,057	962
Other accrued costs	629	981
Total other-long term liabilities	$ 1,782	$ 2,647

4. Fair Value of Financial Instruments

Assets and liabilities recorded at fair value on a recurring basis in the balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair values. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, as follows:

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 assets' or liabilities' fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

The Company's financial instruments that are carried at fair value mainly consist of Level 3 liabilities. These liabilities that are measured on a recurring basis relate to the 2017 and 2016 Placement Warrants, as described in Note 12. Placement warrant liabilities are valued using the Black-Scholes option-pricing model. Generally, changes in the fair value of the underlying stock, estimated term and volatility would result in a directionally similar impact to the fair value of the warrant (see Note 12). During the year ended December 31, 2022, there were no warrants exercised. During the year ended December 31, 2021, warrants to purchase 119,420 shares of common stock were exercised and the aggregate fair value upon exercise of $0.4 million was reclassified from liabilities to additional paid-in-capital.

The gains and losses from re-measurement of Level 3 financial liabilities are recorded as part of other income (expense), net in the consolidated statements of operations and comprehensive loss. During the year ended December 31, 2022, 2021 and 2020, the Company recorded a gain of $2.6 million, a loss of $2.3 million, and a gain of $0.5 million, respectively, related to the change in fair value of the 2017 and 2016 Placement Warrants. There have been no transfers between Level 1, Level 2 and Level 3 in any periods presented.

The following table sets forth the fair value of the Company's financial liabilities by level within the fair value hierarchy (in thousands):

	At December 31, 2022			
	Level 1	Level 2	Level 3	Total
2017 Placement Warrants Liability	$ —	$ —	$ 3,127	$ 3,127
2016 Placement Warrants Liability	—	—	1,051	1,051
Total Warrant Liability	$ —	$ —	$ 4,178	$ 4,178

	At December 31, 2021			
	Level 1	Level 2	Level 3	Total
2017 Placement Warrants Liability	$ —	$ —	$ 5,030	$ 5,030
2016 Placement Warrants Liability	—	—	1,765	1,765
Total Warrant Liability	$ —	$ —	$ 6,795	$ 6,795

The following table summarizes the changes in the fair value of the Company's Level 3 financial liabilities (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Fair value, beginning of period	$ 6,795	$ 4,864	$ 5,373
Change in fair value of Level 3 financial liabilities	(2,617)	2,284	(509)
Fair value of 2016 Placement Warrants at exercise	—	(2)	—
Fair value of 2017 Placement Warrants at exercise	—	(351)	—
Fair value, end of period	$ 4,178	$ 6,795	$ 4,864

Non-Financial Assets and Liabilities

The Company's non-financial instruments, which primarily consist of intangible assets, right-of-use ("ROU") assets, and property and equipment, are measured at fair value on a non-recurring basis and are reported at carrying value. These assets are subject to fair value adjustments when events or changes in circumstances indicate a significant adverse effect on the fair value of the asset. Impairment charges are recorded to reduce the carrying amount of the assets to their fair value.

During 2022, the Company recorded impairment charges of $1.5 million on its ROU asset for one of the Mountain View, California office spaces and $0.3 million on the related furniture and fixtures to reduce the carrying value to their estimated fair value in connection with the sublease discussed in Note 6.

The fair value of ROU asset and related furniture and fixtures was determined based on Level 3 measurements. Inputs to this fair value measurement included a valuation model that measures the present value of remaining lease payments less estimated sublease income at a discount rate that captures the risk associated with the future cash flows.

5. Debt

In December 2018, the Company entered into a term loan agreement with SVB (the "SVB Term Loan"). The SVB Term Loan was subsequently amended, and on May 31, 2022, the Company entered into the Fourth Amendment (the "Fourth Amendment") to SVB Term Loan. The Fourth Amendment, among other things, amended the SVB Term Loan to: (i) increase the term loan agreement principal amount from $58.0 million to $60.0 million, (ii) revise the maturity date to October 1, 2027, and (iii) revise the payment schedule for the outstanding principal balance to 37 equal payments of principal to begin on October 1, 2024. The amendment was treated as a debt modification.

On November 14, 2022, the Company entered into a new five-year loan facility agreement with MidCap and SVB (the "Credit Agreement"). The Credit Agreement consists of a term loan of up to $100 million and a Revolving Credit Facility of up to $25 million.

Term Loan

The key elements of the term loan include (i) a term loan commitment up to $100 million, of which $25 million may be accessed upon achievement of a gross margin target for the 2023 fiscal year; (ii) an annual interest rate of the Wall Street Journal ("WSJ") Prime rate plus 3.5% with a floor of 9.25%; (iii) an exit fee payment of 4.00% of the aggregate principal amount, and (iv) a maturity date of November 1, 2027, with three years of interest only payments, with the option to extend the interest only period for one additional year at the election of the Company. At inception of the term loan, the Company evaluated this option as an embedded derivative and determined it to be clearly and closely related to the host contract. As such, no bifurcation of the embedded derivative from the host contract was required.

At close, the Company drew $75 million, of which $60.0 million was used to retire its existing SVB Term Loan. The Company accounted for the term loan portion of the Credit Agreement as a debt modification. However, given the large disproportion between the amount repaid to SVB under the existing term loan and the amount received from SVB under the new Agreement, the Company wrote off a pro-rata portion of the unamortized deferred fees and costs for a total of $0.5 million.

The Company received net proceeds of approximately $14.0 million after related bank and legal fees of approximately $1.0 million. Such fees are accounted for as debt discount and issuance costs and presented as a direct deduction from the carrying amount of debt on the Company's consolidated balance sheets. Debt discount, issuance costs and the final payment are amortized or accreted as interest expense over the term of the loan using the effective interest method.

Revolving Credit Facility

The key elements of the revolving line of credit under the Credit Agreement include (i) a revolving line of credit of up to $25 million, comprised of an initial $15 million commitment, with the option to increase the line by an additional $10 million, subject to lender approval and borrowing base availability; (ii) an annual interest rate of the WSJ Prime rate plus 0.5% with a floor of 6.25%; (iii) a maturity date of November 1, 2027. At close, the Company drew $5 million.

The Credit Agreement is secured by substantially all assets of the Company, except that the collateral does not include any intellectual property held by the Company, provided, however, the collateral does include all accounts and proceeds of such intellectual property.

The Credit Agreement contains customary representations and warranties and customary affirmative and negative covenants applicable to the Company and its subsidiaries, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, prepayment of other indebtedness, dividends and other distributions and transactions with affiliates. The Credit Agreement also contains financial covenants that require the Company to maintain a minimum net revenue threshold and a minimum backlog balance.

The Credit Agreement includes standard events of default, including, among other things, subject in certain cases to customary grace periods, thresholds and notice requirements, the Company's failure to fulfill its obligations under the Agreement or the occurrence of a material adverse change in the Company's business, operations, or condition (financial or otherwise). In the event of default by the Company under the Credit Agreement, MidCap and SVB would be entitled to exercise its remedies thereunder, including the right to accelerate the debt, upon which the Company may be required to repay all amounts then outstanding under the Agreement, which could harm the Company's financial condition.

The Company's scheduled future payments on the term loan at December 31, 2022 are as follows (in thousands):

Year Ended December 31,	
2023	$ —
2024	—
2025	6,250
2026	37,500
2027	31,250
Total future principal payments	75,000
Less: unamortized debt discount	(1,661)
Carrying value of long-term debt	73,339
Less: current portion	—
Long-term portion	$ 73,339

6. Commitments and Contingencies

Operating Leases

The Company entered into agreements to lease office space in Oakwood Village, Ohio, Mountain View, California and Denver, Colorado under noncancelable operating lease agreements. The table below summarizes the Company's office space leases:

	Approximate Square Footage	**Lease Expiration**
Oakwood Village, Ohio	19,800	October 2026
Mountain View, California	25,500	July 2025
Mountain View, California	24,600	December 2025
Denver, Colorado	12,800	October 2024

In recognition of the ROU assets and the related lease liabilities, the options to extend the lease term have not been included as the Company is not reasonably certain that it will exercise any such option.

In recognition of the right-of-use assets and the related lease liabilities, the option to extend the lease term has not been included as the Company is not reasonably certain that it will exercise any such option. At December 31, 2022, the weighted-average remaining lease term in years is 2.7 years and the weighted-average discount rate used is 7.6%. The Company recognized of $2.3 million, $2.8 million, and $3.1 million lease costs arising from lease transactions for the years December 31, 2022, 2021 and 2020, respectively.

During the years ended December 31, 2022, 2021, and 2020, the Company recognized the following cash flow transactions arising from lease transactions (in thousands):

	For the Year Ended December 31,		
	2022	2021	2020
Cash paid for amounts included in the measurement of lease liabilities	$ 2,261	$ 2,848	$ 3,145
Right-of-use assets obtained in exchange for new operating lease liabilities	—	1,693	643

At December 31, 2022, the future payments and interest expense for the operating leases are as follows (in thousands):

Year Ended December 31,	Future Payments
2023	$ 3,357
2024	3,301
2025	2,096
2026	146
Thereafter	—
Total undiscounted cash flows	$ 8,900
Less: imputed interest	(835)
Present value of lease liabilities	$ 8,065

Sublease

In March 2022, the Company entered into an agreement to sublease all 24,600 rentable square feet of one of its Mountain View, California office spaces to a subtenant to offset its cash outflow. The sublease commenced on May 2, 2022 and will expire on March 31, 2024, unless earlier terminated in accordance with the sublease agreement.

Sublease income is recognized on a straight-line basis over the term of the sublease agreement and is recorded separately from the related rent expense from the Mountain View, California office space within interest and other income, net in the consolidated statements of operations and comprehensive loss. The sublease provides for annual base rent of approximately $0.5 million in the first year (subject to an abatement of base rent for the first two months of the sublease) and approximately $0.6 million in the second year. The sublessee is responsible for its pro rata share of certain costs, taxes and operating expenses related to the subleased space, the consideration for which is variable and recorded net of the Company's operating costs in the office space. Variable lease consideration that does not depend on an index or rate is allocated to a non-lease component and is recognized over time in accordance with the pattern of transfer. The variable consideration relates exclusively to non-lease components representing such services and will be recognized as incurred. For the year ended December 31, 2022, gross sublease income of $0.4 million was recorded.

Legal Proceedings

In the normal course of business, the Company may become involved in legal proceedings. The Company will accrue a liability for legal proceedings when it is probable that a liability has been incurred and the amount can be reasonably estimated. Significant judgment is required to determine both probability and the estimated amount. When only a range of possible loss can be established, the most probable amount in the range is accrued. If no amount within this range is a better estimate than any other amount within the range, the minimum amount in the range is accrued.

Purchase Commitments

At December 31, 2022, the Company had $15.6 million in outstanding firm purchase commitments.

7. Revenue

The Company derives revenue primarily from the sale of MRIdian systems and related services as well as support and maintenance services on sold systems. Revenue is categorized as product revenue, service revenue and distribution rights revenue.

The following table presents revenue disaggregated by type and geography (in thousands):

	Years Ended December 31,		
U.S.	**2022**	**2021**	**2020**
Product	$ 38,765	$ 31,769	$ 8,428
Service	13,052	10,399	7,739
Total U.S. revenue	$ 51,817	$ 42,168	$ 16,167
Outside of U.S. ("OUS")			
Product	$ 40,560	$ 20,096	$ 34,314
Service	9,316	7,380	6,061
Distribution rights	513	475	475
Total OUS revenue	$ 50,389	$ 27,951	$ 40,850
Total			
Product	$ 79,325	$ 51,865	$ 42,742
Service	22,368	17,779	13,800
Distribution rights	513	475	475
Total revenue	$ 102,206	$ 70,119	$ 57,017

Arrangements with Multiple Performance Obligations

The Company frequently enters into sales arrangements that include multiple performance obligations. Such performance obligations mainly consist of (i) sale of MRIdian systems, (ii) installation of MRIdian systems, and (iii) product support, which includes extended service and maintenance. For such arrangements, the Company allocates revenue to each performance obligation based on its relative standalone selling price. The standalone selling price ("SSP"), is determined based on observable prices at which the Company separately sells the products and services. If a SSP is not directly observable, the Company will estimate the SSP considering market conditions or internally approved pricing guidelines related to the performance obligations.

Product Revenue

Product revenue is derived primarily from the sales of MRIdian system. The system contains both software and non-software components that together deliver essential functionality.

Certain revenue contracts have terms that result in the control of the system transferring to the customer upon delivery and inspection, as opposed to historically upon customer acceptance. For contracts in which control of the system transfers upon delivery and inspection, the Company recognizes revenue for the systems at the point in time when delivery and inspection by the customer has occurred. For these same contracts, the Company recognizes installation revenue over the period of installation as the installation services are performed and control is transferred to the customer. For all contracts in which control continues to transfer upon post-implementation customer acceptance, revenue for the system and installation will continue to be recognized upon customer acceptance.

Certain customer contracts with distributors do not require ViewRay installation at the ultimate user site, and the distributors may either perform the installation themselves or hire another party to perform the installation. For sales of MRIdian systems for which the Company is not responsible for installation, revenue recognition occurs when the entire system is shipped, which is when the control of the system is transferred to the customer.

Service Revenue

Service revenue is derived primarily from maintenance services. The maintenance and support service is a stand-ready obligation which is performed over the term of the arrangement and, as a result, service revenue is recognized ratably over the service period as the customers benefit from the service throughout the service period.

Distribution Rights Revenue

In December 2014, the Company entered into a distribution agreement with Itochu Corporation pursuant to which it appointed Itochu as its exclusive distributor for the promotion, sale and delivery of MRIdian products within Japan. In consideration of the exclusive distribution rights granted, the Company received $4.0 million, which was recorded as deferred revenue. Starting in August 2016, distribution rights revenue is recognized ratably over the remaining term of the distribution agreement of approximately 8.5 years. A time-elapsed method is used to measure progress because the control is transferred evenly over the remaining contractual period.

Contract Balances

The timing of revenue recognition, billings and cash collections results in short-term and long-term trade receivables, customer deposits, deferred revenues and deferred cost of revenue on the consolidated balance sheets.

Trade receivables are recorded at the original invoiced amount, net of an estimated allowance for credit losses. Trade credit is generally extended on a short-term basis. The Company occasionally provides for long-term trade credit for its maintenance services so that the period between when the services are rendered to its customers and when the customers pay for that service is within one year. Thus, the Company's trade receivables do not bear interest or contain a significant financing component. Long-term trade receivables of $9.0 million and $5.4 million were reported within other assets in the consolidated balance sheets at December 31, 2022 and 2021, respectively. These amounts are billed in accordance with the terms of the customer contracts to which they relate and are expected to be collected three to four years from the date of invoice as the underlying maintenance services are rendered. At times, billing occurs subsequent to revenue recognition, resulting in an unbilled receivable which represents a contract asset. This contract asset is recorded as an unbilled receivable and reported as part of accounts receivable on the consolidated balance sheets.

Trade receivables are evaluated for expected credit losses based on past credit history of the respective customers and their current financial condition. Changes in the estimated collectability of trade receivables are included in the results of operations for the period in which the estimate is revised. Trade receivables that are deemed uncollectible are offset against the allowance for credit losses. The Company generally does not require collateral for trade receivables. There was $0.3 million and nil allowance for credit losses recorded at December 31, 2022 or 2021.

Customer deposits represent payments received in advance of system installation. For domestic and international sales, advance payments received prior to inventory shipments are recorded as customer deposits. Advance payments are subsequently reclassified to deferred revenue upon inventory shipment. All customer deposits, including those that are expected to be a deposit for more than one year, are classified as current liabilities based on consideration of the Company's normal operating cycle (the time between acquisition of the inventory components and the final cash collection from customers on these inventory components) which is in excess of one year.

Deferred revenue consists of deferred product revenue and deferred service revenue. Deferred product revenue arises from timing differences between the fulfillment of contract obligations and satisfaction of all revenue recognition criteria consistent with the Company's revenue recognition policy. Deferred service revenue results from the advance billing for services to be delivered over a period of time. Deferred revenues expected to be realized within one year or normal operating cycle are classified as current liabilities.

Deferred cost of revenue consists of cost for inventory items that have been shipped, but revenue recognition has not yet occurred. Deferred cost of revenue is included as part of current assets as the corresponding deferred product revenue is expected to be realized within one year or the Company's normal operating cycle.

During the years ended December 31, 2022, 2021 and 2020, the Company recognized $10.5 million, $9.3 million and $8.3 million, respectively, of revenues that were included in the deferred revenue balance at the beginning of each reporting period.

Variable Consideration

The Company records revenue from customers in an amount that reflects the transaction price it expects to be entitled to after transferring control of those goods or services. The Company estimates the transaction price at contract inception, including any variable consideration, and updates the estimate each reporting period for any changes.

8. Licensing Agreement

In December 2004, ViewRay Technologies, Inc. entered into a licensing agreement with the University of Florida Research Foundation, Inc., or UFRF, whereby UFRF granted the Company a worldwide exclusive license to certain of UFRF's patents in exchange for 33,652 shares of common stock and a royalty from sales of products developed and sold by the Company utilizing the licensed patents. ViewRay Technologies, Inc. met all of the product development and

commercialization milestones at December 31, 2013, and started to make quarterly royalty payments in 2014. Royalty payments are based on 1% of net sales, defined as the amount collected on sales of licensed products and/or licensed processes after deducting trade and/or quantity discounts, credits on returns and allowances, outbound transportation costs paid and sales tax. Minimum quarterly royalty payments of $50 thousand commenced with the quarter ended March 31, 2014, and are payable in advance. Minimum royalties paid in any calendar year are credited against earned royalties for such calendar year. The royalty payments continue until the earlier of (i) the date that no licensed patents remain enforceable or (ii) once the payment of earned royalties cease for more than four consecutive calendar quarters. Royalty expenses based on 1% of net sales were $0.5 million, $0.3 million and $0.7 million during the years ended December 31, 2022, 2021 and 2020, respectively, and were recorded as product cost of revenue in the consolidated statements of operations and comprehensive loss. There were no minimum royalty payments in excess of 1% of net sales during the years ended December 31, 2022, 2021 and 2020.

9. Distribution Agreement

In December 2014, the Company entered into a distribution agreement with Itochu Corporation, or Itochu, a Japanese entity, pursuant to which the Company appointed Itochu as its exclusive distributor for the sale and delivery of its MRIdian products within Japan. The exclusive distribution agreement has an initial term of 10 years from December 2014, and contains features customary in such distribution agreements. Under this distribution agreement, the Company will supply its products and services to Itochu based upon the Company's then-current pricing. In consideration of the exclusive distribution rights granted, Itochu agreed to pay a distribution fee of $4.0 million in three installments: (i) the first installment of $1.0 million was due upon execution of the distribution agreement; (ii) the second installment of $1.0 million was due within 10 business days following submission of the application for regulatory approval of the Company's product to the Japan regulatory authority; and (iii) the final installment of $2.0 million was due within 10 business days following receipt of approval for the Company's product from the Japanese Ministry of Health, Labor and Welfare. The first and second installments of $2.0 million in aggregate were received in December 2014 and December 2015, respectively. In August 2016, the Company received the third and final $2.0 million installment upon the receipt of regulatory approval to market MRIdian in Japan. The entire $4.0 million distribution fee received was reclassified to deferred revenue as it was no longer refundable. In August 2016, the Company started recognizing distribution rights revenue ratably over the remaining term of the exclusive distribution agreement of approximately 8.5 years. The distribution rights revenue was $0.5 million for each of the years ended December 31, 2022, 2021 and 2020.

10. Equity Financing

Public Offering of Common Stock

On December 3, 2019, we entered into an underwriting agreement with Piper Jaffray & Co., as representatives of several underwriters (the "December 2019 Underwriters"), in connection with the issuance and sale of 47,782,500 shares of our common stock, which included the full exercise of the underwriters' option to purchase additional shares, at a public offering price of $3.13 per share. We completed the offering on December 6, 2019 and received aggregate net proceeds of approximately $138.4 million, after deducting the underwriting discounts and commissions and offering expenses payable by us.

On January 4, 2021, the Company entered into an underwriting agreement with Piper Sandler & Co., as representative of the several underwriters named therein (the "January 2021 Underwriters"), with respect to the issuance and sale of 11,856,500 shares of our common stock, which included the full exercise of the January 2021 Underwriters' option to purchase additional shares, at a price to the public of $4.85 per share. The Company completed the offering on January 7, 2021 and received net proceeds of approximately $53.5 million, after deducting the underwriting discounts and commissions and estimated offering expenses payable by the Company.

On November 16, 2021, the Company entered into an underwriting agreement with Piper Sandler & Co. and Stifel, Nicolaus & Company, Incorporated, as representatives of the several underwriters named therein (the "November 2021 Underwriters"), with respect to the issuance and sale by the Company of 14,375,000 shares of our common stock, which included the full exercise of the November 2021 Underwriters' option to purchase additional shares, at a price to the public of $5.60 per share. The Company completed the offering on November 18, 2021, and received net proceeds of approximately $75.1 million, after deducting the underwriting discounts and commissions and estimated offering expenses payable by the Company.

11. Convertible Preferred Stock

In March 2018, the Company issued 3,000,581 shares of Series A convertible preferred stock to an existing investor through the March 2018 Direct Registered Offering at a price of $8.31 per share. At the date of the financing, because the

effective conversion rate of the preferred stock was less than the market value of the Company's common stock, a beneficial conversion feature of $2.7 million was recorded as a discount to the convertible preferred stock and an increase to additional paid in capital. Because the preferred stock was perpetual and convertible at the option of the holder at any time, the Company fully amortized the discount related to the beneficial conversion feature as a deemed dividend which was recognized as an increase to accumulated deficit and net loss attributable to common stockholders. Effective on April 19, 2018, all outstanding shares of Series A convertible preferred stock were converted into shares of common stock at a conversion ratio of 1 1. Further, in May 2018, the Company filed a Certificate of Elimination of the Series A Convertible Preferred Stock de-authorizing the 3,000,581 shares of Series A convertible preferred stock. The Company had no outstanding preferred stock as of December 31, 2022 and 2021.

12. Warrants

Equity Classified Common Stock Warrants

In connection with the merger of ViewRay, Inc. and ViewRay Technologies, Inc. in July 2015, or the Merger, in July and August 2015, the Company conducted a private placement offering as part of which the Company issued warrants, or the 2015 Placement Warrants, that provide the warrant holder the right to purchase 198,760 shares of common stock at an exercise price of $5.00 per share. The 2015 Placement Warrants are exercisable at any time at the option of the holder until the five-year anniversary of their date of issuance. During the year ended December 31, 2018, the Company issued 92,487 shares of its common stock upon the net exercise of 2015 Placement Warrants to purchase 159,010 shares. The remaining 39,750 shares of 2015 Placement Warrants expired in July and August 2020 and none remained outstanding at December 31, 2022.

In connection with the March 2018 Direct Registered Offering, the Company issued warrants to purchase 1,418,116 shares of common stock at an exercise price of $8.31 per share. The 2018 Offering Warrants became exercisable upon issuance and expire in March 2025. None of the 2018 Offering Warrants have been exercised to date and they all remained outstanding at December 31, 2022.

As separate classes of securities were issued in a bundled transaction, the gross proceeds from the March 2018 Direct Registered Offering of $59.1 million were allocated to common stock, Series A convertible preferred stock and the 2018 Offering Warrants based on their respective relative fair value upon issuance. The aggregate fair value of the 2018 Offering Warrants of $7.4 million was estimated using the Black-Scholes option-pricing model with the following assumptions:

	Upon Issuance
Common Stock Warrants:	
Expected term (in years)	7.0
Expected volatility (%)	62.5%
Risk-free interest rate (%)	2.8%
Expected dividend yield (%)	0%

The allocated proceeds from the 2018 Offering Warrants of $6.6 million was recorded in additional paid-in-capital.

Liability Classified Common Stock Warrants

In connection with the 2017 and 2016 Private Placements, the Company issued the 2017 and 2016 Placement Warrants, that provide the warrant holder the right to purchase 1,720,512 and 1,380,745 shares of common stock. The 2017 and 2016 Placement Warrants contain protection whereby the warrant holders will have the right to receive cash in the amount equal to the Black-Scholes value of the warrants upon the occurrence of a change in control, as defined in the agreement. The 2017 and 2016 Placement Warrants were accounted for as a liability at the date of issuance and are adjusted to fair value at each balance sheet date, with the change in fair value recorded as a component of other income (expense), net in the

consolidated statements of operations and comprehensive loss. The key terms and activity of the 2017 and 2016 Placement Warrants are summarized as follows:

	Issuance Date	Term	Exercise Price Per Share	Warrants Exercised during the Year Ended December 31, 2021	Warrants Outstanding at December 31, 2021	Warrants Exercised during the Year Ended December 31, 2022	Warrants Outstanding at December 31, 2022
2017 Placement Warrants	January 2017	7 years	$ 3.17	118,868	1,500,022	—	1,500,022
2016 Placement Warrants	August and September 2016	7 years	$ 2.95	552	536,711	—	536,711
Total				119,420	2,036,733	—	2,036,733

As separate classes of securities were issued in a bundled transaction, the gross proceeds of $26.1 million and $13.8 million from the 2017 and 2016 Private Placement were allocated first to the 2017 and 2016 Placement Warrants based on their fair value upon issuance, and the residuals were allocated to common stock. The fair value upon issuance of $3.4 million and $2.7 million were estimated using the Black-Scholes option-pricing model using the following assumptions:

	Upon Issuance	
	2017 Placement Warrants	2016 Placement Warrants
Expected term (in years)	7.0	7.0
Expected volatility (%)	62.9%	61.6%
Risk-free interest rate (%)	2.2%	1.4%
Expected dividend yield (%)	0%	0%

The following table summarizes the change in fair value the Company recognized related to its 2017 and 2016 Placement Warrants in the consolidated statements of operations and comprehensive loss for the years ended December 31, 2022, 2021, and 2020:

	December 31, 2022	December 31, 2021	December 31, 2020
Gain (loss) on 2017 Placement Warrants	$ 714	$ (1,705)	$ 367
Gain (loss) on 2016 Placement Warrants	1,903	(579)	142
	$ 2,617	$ (2,284)	$ 509

The fair value of the 2017 and 2016 Placement Warrants at December 31, 2022 and 2021 was estimated using the Black-Scholes option-pricing model and the following weighted-average assumptions:

	2017 Placement Warrants		2016 Placement Warrants	
	December 31, 2022	December 31, 2021	December 31, 2022	December 31, 2021
Expected term (in years)	1.0	2.0	0.6	1.6
Expected volatility	82.9%	86.0%	82.7%	85.5%
Risk-free interest rate	4.7%	0.4%	4.8%	0.3%
Expected dividend yield	0%	0%	0%	0%

13. Stock-Based Compensation

As of December 31, 2022, the Company had an active stock-based incentive compensation plan and an employee stock purchase plan: the 2015 Equity Incentive Award Plan (as amended and restated, the “2015 Plan”), and the 2015 Employee

Stock Purchase Plan (as amended and restated, the “ESPP”), respectively. All new equity compensation grants are issued under these two plans; however, outstanding awards previously issued under inactive plans will continue to vest and remain exercisable in accordance with the terms of the respective plans. At the recommendation of the Company’s board of directors, the shareholders approved an amendment to the 2015 Plan on June 10, 2022, which increased the number of shares available for issuance under the 2015 Plan by 6,300,000 shares of Common Stock.

The Company's board of directors determined the 2018 Inducement Program (“2018 Plan”) was no longer required under ViewRay’s compensation program and terminated it effective April 19, 2022. No further awards will be granted under this plan and no such awards have been granted since August 16, 2021. As a result, all 1,501,304 shares previously available for issuance under the 2018 Plan have been restored to the Company’s general authorized but unissued share reserve, and are no longer set aside for grants under the 2018 Plan.

The 2015 Plan provides for the grant of stock and stock-based awards including stock options, restricted stock units (including deferred stock units), performance-based stock units, and stock appreciation rights. Additionally, stock units may be issued as performance-based stock units to align stock compensation awards to the attainment of annual or long-term performance goals. As of December 31, 2022, there were 5.9 million shares available for grant under the 2015 Plan.

Stock-Based Compensation Expense

Total stock-based compensation expense recognized in the Company’s consolidated statements of operations and comprehensive loss is classified as follows (in thousands):

	Year Ended December 31,		
	2022	2021	2020
Cost of revenue	$ 668	$ 1,018	$ 965
Research and development	2,858	2,538	2,288
Selling and marketing	2,936	1,615	1,091
General and administrative	15,146	18,700	18,461
Total stock-based compensation expense	$ 21,608	$ 23,871	$ 22,805

Our stock-based compensation expense is based on the value of the portion of share-based payment awards that are ultimately expected to vest, assuming estimated forfeitures at the time of grant. Stock-based compensation relating to stock-based awards granted to consultants was insignificant for the years ended December 31, 2022, 2021 and 2020.

Restricted Stock Units, Deferred Stock Units and Performance Stock Units:

The Company grants restricted stock units, deferred stock units, and performance stock units (collectively "Incentive Stock Units" or "ISUs").

Restricted Stock Units ("RSUs") are granted to the Company's board of directors and employees for their services. Deferred Stock Units ("DSUs") are granted to the Company's board of directors at their election in lieu of retainer and committee service fees. The DSUs granted to board members are either fully vested upon issuance or vest over a period of time from the grant date and will be released and settled upon termination of the board member’s services, the occurrence of a change in control event, or the tenth anniversary of the grant date. The RSUs and DSUs granted to employees and/or board members vest in equal annual or monthly installments over one to three years from the grant date and are subject to the participants continuing service to the Company over that period.

In March 2021, the Company introduced a performance share plan (the “2021 PSU Plan”) as a component of its equity grants for 2021. The 2021 PSU Plan provides for the award of performance share units (“PSUs”) to employees which vest upon on the achievement of performance targets related to the Company’s compound annual revenue growth rate over a three-year period are achieved. All PSU awards also include a time-based vesting component. If minimum performance thresholds are achieved, each PSU award will convert into shares at a defined ratio depending on the degree of achievement of the performance target designated by each individual award. If minimum performance thresholds are not achieved, then no shares will be issued. Based upon the expected levels of achievement, stock-based compensation is recognized on a straight-line basis over the PSU awards’ requisite service periods. The expected levels of achievement are reassessed over the requisite service periods and, to the extent that the expected levels of achievement change, stock-based compensation is adjusted and recorded on the consolidated statement of operation and the remaining unrecognized stock-based compensation is recognized over the remaining requisite service period.

The grant date fair values of ISUs are based on the closing market price of our common stock on the grant date. Stock-based compensation expense, net of forfeitures, is recognized on a straight-line basis over the requisite service period.

The weighted-average grant date fair value of ISUs granted in fiscal year 2022, 2021 and 2020 was $3.96 per share, $4.87 per share and $2.80 per share, respectively.

The table below summarizes the Company's activity and related information for its ISUs:

	RSUs and DSUs		PSUs	
	Number of Shares	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Grant Date Fair Value
Unvested at December 31, 2021	5,536,925	$ 4.04	707,088	$ 4.66
Granted	2,534,144	$ 3.86	1,249,383	$ 4.14
Incremental awards	—	$ —	1,638,775 (1)	$ 4.66
Vested	(2,767,524)	$ 3.62	—	$ —
Cancelled or forfeited	(280,516)	$ 4.19	(44,391)	$ 4.34
Unvested at December 31, 2022	5,023,029	$ 4.16	3,550,855	$ 4.33
Vested and unreleased	248,978		—	
Outstanding at December 31, 2022	5,272,007		3,550,855	

(1) Includes incremental PSUs which have been accrued as of December 31, 2022 based on the expected level of achievement of previously granted awards.

The total grant date fair value of ISUs awarded was $15.0 million, $16.8 million and $17.0 million for the years ended December 31, 2022, 2021 and 2020, respectively. The total fair value of ISUs vested was $10.9 million, $27.5 million and $5.1 million for the years ended December 31, 2022, 2021 and 2020, respectively.

At December 31, 2022, total unrecognized stock-based compensation cost related to ISUs, net of estimated forfeitures, was $17.3 million, which is expected to be recognized over a weighted-average period of 1.4 years. As of December 31, 2022, 6.7 million shares of ISUs are expected to vest.

Stock Options:

Stock option awards are generally granted with an exercise price equal to the market price of our stock at the date of grant and with a four-years vesting schedule. Stock option awards generally expire 10 years from the date of grant.

A summary of the Company’s stock option activity and related information is as follows:

	Number of Stock Options Outstanding	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value
				(In thousands)
Options outstanding at December 31, 2021	7,195,398	$ 6.97	6.1	$ 5,203
Options granted	—	—		
Options exercised	(28,812)	2.76		
Options cancelled or forfeited	(418,006)	7.75		
Options outstanding at December 31, 2022	6,748,580	$ 6.95	5.0	$ 3,307
Options exercisable at December 31, 2022	6,480,492	$ 7.11	4.9	$ 2,745
Options vested and expected to vest at December 31, 2022	6,769,006	$ 6.97	5.0	$ 3,256

There were no options granted to employees for the years ended December 31, 2022 or 2021. The weighted-average grant date fair value of options granted to employees was $1.20 per share for the year ended December 31, 2020.

Aggregate intrinsic value represents the difference between the estimated fair value of the underlying common stock and the exercise price of outstanding, in-the-money options. The aggregate intrinsic value of options exercised was nominal for the years ended December 31, 2022, 2021, and 2020.

At December 31, 2022, total unrecognized stock-based compensation cost related to stock options granted to employees, net of estimated forfeitures, was $0.4 million, which is expected to be recognized over a weighted-average period of 1.0 year.

The determination of the fair value of stock options on the date of grant using an option-pricing model is affected by the estimated fair value of the Company’s common stock, as well as assumptions regarding a number of complex and subjective variables. The variables used to calculate the fair value of stock options using the Black-Scholes option-pricing

model include actual and projected employee stock option exercise behaviors, expected price volatility of the Company's common stock, the risk-free interest rate and expected dividends. Each of these inputs is subjective and generally requires significant judgment to determine.

The risk-free interest rate is based on the zero-coupon U.S. Treasury notes, with maturities similar to the expected term of the options. The Company has not paid and does not anticipate paying cash dividends on its common stock; therefore, the expected dividend yield is assumed to be zero.

During the fourth quarter of 2020, the Company began to determine volatility by solely using the Company's own historical volatility measurements, since more than four years of historical data became available in the public market. Prior to the fourth quarter of 2020, the Company determined the volatility for stock options granted based on the average historical price volatility for the Company and industry peers over a period equivalent to the expected term of the stock options grants.

The forfeiture rate of stock options is estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Forfeitures have been estimated by the Company based upon historical and expected forfeiture experience.

The fair value of employee stock options was estimated at the date of grant using a Black-Scholes option-pricing model with the following weighted-average assumptions:

	Year Ended December 31,
	2020
Expected term (in years)	6.0
Expected volatility (%)	68.8%
Risk-free interest rate (%)	0.7%
Expected dividend yield (%)	0%

Employee Stock Purchase Plan:

In July 2015, the Company adopted the Employee Stock Purchase Plan ("ESPP"). Certain employees, as defined by the ESPP, are eligible to participate in the ESPP if employed by the Company for at least 20 hours per week during at least five months per calendar year. Participating employees may contribute up to the lesser of 15% of their eligible earnings or $30,000 during each offering period, provided that in no event shall a participating employee be permitted to purchase more than 3,000 shares of common stock during each offering period.

The purchase price of common stock purchased under the ESPP is currently equal to 85% of the lesser of the fair market value of a share of common stock on: 1) the first trading day of an offering period and 2) the last trading of each offering period. At December 31, 2022, 3.5 million shares were reserved for issuance under the ESPP, respectively. No more than 3.5 million shares of common stock may be issued under the ESPP. As of December 31, 2022, 0.6 million shares have been issued under the ESPP and 2.9 million shares remained available for future issuance under the ESPP.

Purchase rights granted under the ESPP are valued using the Black-Scholes pricing model. During 2022, the grant date for the two offering periods was January 1, 2022 and July 1, 2022. Starting in 2021, the Company determines volatility by solely using the Company's own historical volatility measurements, since more than four years of historical data became available in the public market. Before this, the Company estimated the volatility rate by taking the average historic price volatility of the Company industry peers based on daily price observations over a period equivalent to the expected term of the offering period. The expected term represents the period of time the ESPP purchase rights are expected to be outstanding and approximates the offering period. The latest offering period and related purchase was completed on December 31, 2022. As such, there was no unrecognized compensation cost related to the ESPP as of December 31, 2022. Total compensation expense was $0.4 million, $0.3 million and $0.1 million for the years ended December 31, 2022, 2021, and 2020.

The fair value of each purchase right granted under the ESPP was estimated on the date of grant using the Black-Scholes option-pricing model with the following assumptions:

	Year Ended December 31,		
	2022	2021	2020
Expected term (in years)	0.50	0.50	0.3 - 0.5
Expected volatility (%)	83.2% - 83.8%	84.2% - 86.0%	83.0%
Risk-free interest rate (%)	0.22% - 2.52%	0.05% - 0.09%	0.09% - 0.17%
Expected dividend yield (%)	—%	—%	—%

14. Income Taxes

Income Tax Expense

The following reconciles the differences between income taxes computed at the federal income tax rate and the provision for income taxes:

	Year Ended December 31,		
	2022	2021	2020
Expected income tax benefit at the federal statutory rate	21.0 %	21.0 %	21.0 %
State taxes, net of federal benefit	0.0	0.0	0.0
Change in federal statutory rate	0.0	0.0	0.0
Non-deductible stock compensation	(4.5)	(3.1)	0.2
True-up federal deferred taxes	7.7	0.0	0.0
Non-deductible items and other	0.5	(1.7)	(3.6)
Federal and state credits	1.0	0.7	0.5
Change in valuation allowance	(25.7)	(16.9)	(18.1)
Total	0.0 %	0.0 %	0.0 %

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. The principal components of the Company's net deferred tax assets consisted of the following at December 31, 2022 and 2021 (in thousands):

	Year Ended December 31,	
	2022	2021
Deferred tax assets		
Net operating loss carryforwards	$ 155,153	$ 140,581
Research and development tax credits	10,406	9,149
Reserves and accruals	7,091	6,004
Operating lease liability	1,868	2,615
Capitalized §174 Costs	4,476	—
Share-based compensation	8,157	1,406
Other	5,277	4,109
Total deferred tax assets	192,428	163,864
Less: Valuation allowance	(191,051)	(161,487)
Net deferred tax assets	1,377	2,377
Deferred tax liabilities		
Right-of-use assets	(1,377)	(2,377)
Total deferred tax liabilities	(1,377)	(2,377)
Net deferred tax assets	$ —	$ —

The Company maintains a valuation allowance related to its deferred tax asset position when management believes it is more likely than not that the net deferred tax assets will not be realized in the future. The Company's valuation allowance increased by $29.6 million and $23.3 million during the year ended December 31, 2022 and 2021, respectively.

At December 31, 2022, the Company had federal net operating loss carryforwards of $670.0 million, which begin to expire in the year ending December 31, 2024, and $274.6 million related to state net operating loss carryforwards, which begin to expire in the year ending December 31, 2022. The Company had federal research and development tax credit carryforwards of $9.0 million, and state carryforwards of $5.3 million at the year ended December 31, 2022. The federal credits begin to expire in the year ending December 31, 2027 and the state credits carryforward indefinitely.

Under the provisions of the Internal Revenue Code, or IRC, net operating loss and credit carryforwards and other tax attributes may be subject to limitation if there has been a significant change in ownership of the Company, as defined by the IRC. The Company performed a Section 382 analysis in February of 2022 and three ownership changes were identified, which had a corresponding limitation of tax attributes. Future owner or equity shifts could result in additional limitations on net operating loss and credit carryforwards.

Because of the net operating loss and credit carryforwards, all of the Company's federal tax returns and state returns since the year ended December 31, 2004 remain subject to federal and California examination.

The Company accounts for uncertain tax positions using a "more-likely-than-not" threshold. The evaluation of uncertain tax positions is based on factors including, but not limited to, changes in tax law, the measurement of tax positions taken or expected to be taken in tax returns, the effective settlement of matters subject to audit, new audit activity and changes in facts or circumstances related to a tax position. The Company evaluates these tax positions on an annual basis. In addition, the Company also accrues for potential interest and penalties related to unrecognized tax benefits in income tax expense.

At December 31, 2022 and 2021, the Company's unrecognized tax benefits consist of the following (in thousands):

	Year Ended December 31,	
	2022	2021
Unrecognized tax benefit, beginning of period	$ 3,357	$ 2,681
Gross increases — current year tax positions	908	704
Gross increases — prior year tax positions	—	—
Gross decreases — prior year tax positions	(363)	(28)
Unrecognized tax benefit, end of period	$ 3,902	$ 3,357

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security ("CARES") Act was signed into law. The CARES Act includes provisions relating to refundable payroll tax credits, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to the tax deprecation methods for qualified improvement property. The impact of the CARES act is estimated to be immaterial on the Company's income tax expense.

15. Employee Benefits

The Company has a 401(k) Plan which covers its eligible employees. The 401(k) Plan permits the participants to defer a portion of their compensation in accordance with the provisions of Section 401(k) of the IRC. Participant contributions are limited to a maximum annual amount as set periodically by the IRC. The Company matched 50% of eligible participant contributions up to 8% annual contribution during the year ended December 31, 2022. The Company's matching contribution to the 401(k) Plan was $1.1 million, $0.7 million, and $1.1 million for the years ended December 31, 2022, 2021, and 2020, respectively.

16. Net Loss per Share

The following table sets forth the computation of the Company's basic and diluted net loss per share for the periods presented (in thousands, except share and per share data):

	Year Ended December 31,		
	2022	2021	2020
Net loss attributable to common stockholders, basic and diluted	$ (107,330)	$ (110,048)	$ (107,908)
Weighted-average common shares used in computing net loss per share, basic and diluted	180,697,230	164,521,064	147,895,561
Net loss per share, basic and diluted	$ (0.59)	$ (0.67)	$ (0.73)

Diluted earnings per share ("EPS") includes the dilutive effect of common stock equivalents and is computed using the weighted-average number of common stock and common stock equivalents outstanding during the reporting period. Diluted EPS for the years ended December 31, 2022, 2021, and 2020 excluded common stock equivalents because the effect of their inclusion would be anti-dilutive or would decrease the reported loss per share.

The following table sets forth securities outstanding that could potentially dilute the calculation of diluted earnings per share:

	Year Ended December 31,		
	2022	2021	2020
Options to purchase common stock	6,748,580	7,195,398	8,142,348
Warrants to purchase common stock - liability classified	2,036,733	2,036,733	2,156,153
Warrants to purchase common stock - equity classified	1,418,116	1,418,116	1,418,116
Unvested restricted stock units	8,573,884	6,244,013	8,046,399

17. Segment and Geographic Information

The Company has one business activity, which is radiation therapy technology combined with magnetic resonance imaging, and operates in one reportable segment. The Company's chief operating decision-maker, its chief executive officer, reviews its operating results on an aggregate basis for purposes of allocating resources and evaluating financial performance. Also, the Company does not have segment managers as the Company manages its operations as a single operating segment.

The following table sets forth revenue by geographic area based on the shipping address of the customers' location (in thousands):

	Year Ended December 31,		
	2022	2021	2020
United States	$ 51,817	$ 42,168	$ 16,167
Italy	10,395	1,060	5,642
France	7,414	7,868	7,025
United Kingdom	1,040	1,173	6,060
Taiwan	218	4,870	10,710
Rest of world	31,322	12,980	11,413
Total revenue	$ 102,206	$ 70,119	$ 57,017

At December 31, 2022 and 2021, nearly all long-lived assets are located in the United States.

18. Related Party Transactions

Hudson Executive Capital LP

Pursuant to the Cooperation Agreement with Hudson Executive Capital LP and certain of its affiliates (collectively, "Hudson") dated March 8, 2022, the Company concurrently entered into a Consulting Agreement with Sai Nanduri, a Senior Investment Analyst and representative of Hudson, pursuant to which the Company was required to pay Mr. Nanduri $160,000 during 2022 and consider Mr. Nanduri as a candidate for election to the Company's board of directors at the 2023 annual meeting of shareholders. This agreement expired on its terms on January 2, 2023.

Pursuant to the Cooperation Agreement with Hudson dated January 20, 2023, the Company concurrently entered into an Observer Agreement with Mr. Nanduri, pursuant to which Mr. Nanduri was appointed an observer to the board of directors of the Company and for which the Company is required to pay Mr. Nanduri $180,000 during 2023. The Company further agreed to appoint Mr. Nanduri as a member of its board of directors in the event a current director were to resign.

License Agreement with University of Florida Research Foundation, Inc.

As discussed in Note 8, the Company pays a royalty to UFRF, a stockholder in the Company, related to a licensing agreement.

Distribution Agreement with Chindex Shanghai International Trading Company Limited

In November 2019, the Company entered into a distribution agreement with Chindex Shanghai International Trading Company Limited (“Chindex”) which became effective in February 2020. Chindex is a subsidiary of Fosun International Limited (“Fosun”).

Under the distribution agreement, Chindex acts as the Company’s distributor and regulatory agent for the sale and delivery of its MRIdian products within the People’s Republic of China, excluding Hong Kong, Macau and Taiwan. The distribution agreement has an initial term of five years with an option to renew for an additional five years. Under the distribution agreement, the Company will supply its products and services to Chindex based on an agreed upon price between the Company and Chindex. In accordance with the agreement, Chindex agreed to pay ViewRay an upfront fee, portions of which may be refundable under certain conditions, of $3.5 million, payable in three installments: (i) the first installment of $1.5 million due approximately 60 days after the effectiveness of the distribution agreement; (ii) the second installment of $1.0 million due on the first anniversary from the effective date of the agreement; and (iii) the third installment of $1.0 million due on the second anniversary from the effective date of the agreement. The Company has received all three installments as of December 31, 2022.

Item 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS AND FINANCIAL DISCLOSURE AND SUPPLEMENTARY DATA

None.

Item 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

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

As required by Rule 13a-15(b) under the Exchange Act, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as of the end of the period covered by this report. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at December 31, 2022 at the reasonable assurance level.

Changes in Internal Control

In 2022, we finalized our implementation of a new enterprise resource planning ("ERP") system. The ERP implementation has affected various systems and processes and as a result, we have made certain changes to our internal controls to address the ERP implementation.

Limitations on Effectiveness of Controls and Procedures

In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of controls and procedures must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) and 15d-15(f) of the Exchange Act. Because of its inherent limitations, internal control over financial reporting is not intended to provide absolute assurance that a material misstatement of our consolidated financial statements would be prevented or detected. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the financial statements.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2022 based on the framework established in "Internal Control – Integrated Framework (2013)" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Our management concluded that our internal control over financial reporting was effective as of that date.

Item 9B. OTHER INFORMATION

None.

Item 9C. DISCLOSURES REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Directors, Executive Officers and Corporate Governance

The information in our Proxy Statement for the 2021 Annual Meeting of stockholders regarding directors and executive officers appearing under the headings "Proposal No. 1—Election of Directors," "Executive Officers" and "Information About Stock Ownership—Delinquent Section 16(a) Reports" is incorporated herein by reference.

In addition, the information in our Proxy Statement for the 2023 Annual Meeting of stockholders regarding the director nomination process, the Audit Committee financial expert and the identification of the Audit Committee members appearing under the heading "Corporate Governance and Board of Directors Matters" is incorporated herein by reference.

Code of Conduct and Ethics

The Company has adopted a Code of Conduct and Ethics that applies to all employees, including our principal executive officer and principal financial officer. The full text of our Code of Business Conduct and Ethics is posted on our website at http://investors.viewray.com/corporate-governance/highlights. The Company intends to disclose future amendments to certain provisions of our code, or waivers of such provisions granted to executive officers and directors, on our website within four business days following the date of such amendment or waiver. Any information on ViewRay's website or which can be accessed through it is not a part of this Annual Report on Form 10-K.

Item 11. EXECUTIVE COMPENSATION

The Company maintains employee compensation programs and benefit plans in which our executive officers are participants. Copies of these plans and programs are set forth or incorporated by reference as Exhibits to this Annual Report. The information in our Proxy Statement for the 2023 Annual Meeting of stockholders appearing under the heading "Executive Compensation" is incorporated herein by reference.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT RELATED STOCKHOLDER MATTERS

The information in our Proxy Statement for the 2023 Annual Meeting of stockholders appearing under the heading "Information About Stock Ownership—Security Ownership of Certain Beneficial Owners and Management" and "Executive Compensation—Equity Compensation Plan Information" is incorporated herein by reference.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information in our Proxy Statement for the 2023 Annual Meeting of stockholders appearing under the headings Certain Relationships and Related Party Transactions" and "Corporate Governance and Board of Directors Matters—Director Independence" is incorporated herein by reference.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information in our Proxy Statement for the 2023 Annual Meeting of stockholders appearing under the headings "Proposal No. 2—Ratification of Appointment of Independent Registered Public Accounting Firm—Audit and Non-Audit Services" and "Proposal No. 2—Ratification of Appointment of Independent Registered Public Accounting Firm—Audit Committee Pre-Approval Policies and Procedures" is incorporated herein by reference.

PART IV

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) (1) The financial statements required by Item 15(a) are filed in Item 8 of this Report.

(2) The financial statement schedules required by Item 15(a) are omitted because they are not applicable, not required or the required information is included in the financial statements or notes thereto as filed in Item 8 of this Report.

(3) We have filed, or incorporated into this report by reference, the exhibits listed below.

Exhibit Number	Description	Incorporated by Reference			Filed Herewith
		Form	Exhibit	Date Filed	
2.1	Agreement and Plan of Merger and Reorganization, dated as of July 23, 2015, by and among ViewRay Inc., Acquisition Sub and ViewRay Technologies, Inc.	S-1/A	2.1	12/16/15	
3.1	Amended and Restated Certificate of Incorporation.	S-1/A	3.1	12/16/15	
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of ViewRay, Inc., dated June 11, 2021.	8-K	3.1	6/11/21	
3.3	Amended and Restated Bylaws of ViewRay, Inc.	8-K	3.2	5/10/18	
3.4	Second Amended and Restated Bylaws of ViewRay, Inc.	8-K	3.2	6/11/21	
3.5	Certificate of Merger of Acquisition Sub with and into ViewRay Technologies, Inc.	S-1/A	3.3	12/16/15	
4.1	Form of Common Stock Certificate.	S-1/A	4.1	12/16/15	
4.2	Form of Warrants issued pursuant to that certain Securities Purchase Agreement, dated as of August 19, 2016, by and among ViewRay, Inc. and the Purchasers named therein.	S-1	10.3	9/26/16	
4.3	Form of Warrants issued pursuant to that certain Securities Purchase Agreement, dated as of January 13, 2017, by and among ViewRay, Inc. and the Purchasers named therein.	10-K	4.4	3/17/17	
4.4	Description of Securities.	10-K	4.5	3/12/20	
10.1(a)	Office Lease, effective April 17, 2008, by and between Cleveland Industrial Portfolio, LLC and ViewRay Incorporated.	S-1/A	10.7(a)	12/16/15	
10.1(b)	First Amendment to the Office Lease, effective April 16, 2013 by and between Cleveland Industrial Portfolio, LLC and ViewRay Incorporated.	S-1/A	10.7(b)	12/16/15	
10.1(c)	Second Amendment to the Office Lease, effective August 15, 2014 by and between Cleveland Industrial Portfolio, LLC and ViewRay Incorporated.	S-1/A	10.7(c)	12/16/15	
10.2	Office Lease, effective June 19, 2014, by and between BXP Research Park LP and ViewRay Incorporated.	S-1/A	10.8	12/16/15	
10.3†	First Amended and Restated Offer Letter, dated October 6, 2010, by and between ViewRay Incorporated and James F. Dempsey, Ph.D.	S-1/A	10.11	12/16/15	
10.4(a)#	Development and Supply Agreement, effective May 29, 2008, by and between ViewRay Incorporated and Siemens Aktiengesellschaft, Healthcare Sector.	S-1/A	10.14(a)	12/16/15	
10.4(b)#	Amendment No. 1 to the Development and Supply Agreement, effective December 1, 2009, by and between ViewRay Incorporated and Siemens Aktiengesellschaft, Healthcare Sector.	S-1/A	10.14(b)	12/16/15	
10.4(c)#	Amendment No. 2 to the Development and Supply Agreement, effective May 4, 2010, by and between ViewRay Incorporated and Siemens Aktiengesellschaft, Healthcare Sector.	S-1/A	10.14(c)	12/16/15	
10.4(d)#	Amendment No. 3 to the Development and Supply Agreement, effective February 9, 2011, by and between ViewRay Incorporated and Siemens Aktiengesellschaft, Healthcare Sector.	S-1/A	10.14(d)	12/16/15	
10.4(e)#	Amendment No. 4 to the Development and Supply Agreement, effective May 11, 2012, by and between ViewRay Incorporated and Siemens Aktiengesellschaft, Healthcare Sector.	S-1/A	10.14(e)	12/16/15	
10.4(f)#	Amendment No. 5 to the Development and Supply Agreement, effective May 30, 2012, by and between ViewRay Incorporated and Siemens Aktiengesellschaft, Healthcare Sector.	S-1/A	10.14(f)	12/16/15	

Exhibit Number	Description	Incorporated by Reference			Filed Herewith
		Form	Exhibit	Date Filed	
10.4(g)#	Amendment No. 6 to the Development and Supply Agreement, effective February 21, 2014, by and between ViewRay Incorporated and Siemens Aktiengesellschaft, Healthcare Sector.	S-1/A	10.14(g)	12/16/15	
10.4(h)	Amendment No. 7 to the Development and Supply Agreement, effective November 15, 2015, by and between ViewRay Incorporated and Siemens Aktiengesellschaft, Healthcare Sector.	10-K	10.11(h)	3/12/20	
10.4(i)+	Amendment No. 8 to the Development and Supply Agreement, effective September 19, 2019, by and between ViewRay Incorporated and Siemens Aktiengesellschaft, Healthcare Sector.	10-K	10.11(i)	3/12/20	
10.5#	Cobalt-60 Source Supply and Removal Agreement, effective December 19, 2013, by and between ViewRay Incorporated and Best Theratronics, Ltd.	S-1/A	10.15#	12/16/15	
10.6#	Development and Supply Agreement, effective June 24, 2009, by and between ViewRay Incorporated and Manufacturing Sciences Corporation.	S-1/A	10.16#	12/16/15	
10.7(a)#	Development and Supply Agreement, effective July 9, 2009, by and between ViewRay Incorporated and Tesla Engineering Limited.	S-1/A	10.17(a)	12/16/15	
10.7(b)#	Amendment No. 1 to the Development and Supply Agreement, effective January 20, 2015, by and between ViewRay Incorporated and Tesla Engineering Limited.	S-1/A	10.17(b)	12/16/15	
10.8#	Development and Supply Agreement, effective July 2, 2010, by and between ViewRay Incorporated and PEKO Precision Products, Inc.	S-1/A	10.18	12/16/15	
10.9(a)#	Amended and Restated Joint Development and Supply Agreement, effective May 15, 2008, by and between ViewRay Incorporated and 3D Line GmbH.	S-1/A	10.19(a)	12/16/15	
10.9(b)#	Amendment No. 1 to the Amended and Restated Joint Development and Supply Agreement, effective August 13, 2008, by and between ViewRay Incorporated and Euromechanics Medical GmbH.	S-1/A	10.19(b)	12/16/15	
10.9(c)#	Amendment No. 2 to the Amended and Restated Joint Development and Supply Agreement, effective November 27, 2009, by and between ViewRay Incorporated and Euromechanics Medical GmbH.	S-1/A	10.19(c)	12/16/15	
10.10#	Development and Supply Agreement, effective June 1, 2010, by and between ViewRay Incorporated and Quality Electrodynamics, LLC.	S-1/A	10.20	12/16/15	
10.11(a)#	Standard Exclusive License Agreement with Sublicensing Terms, effective December 15, 2004, by and between ViewRay Incorporated and the University of Florida Research Foundation, Inc.	S-1/A	10.21(a)	12/16/15	
10.11(b)#	Amendment No. 1 to the Standard Exclusive License Agreement with Sublicensing Terms, effective December 6, 2007, by and between ViewRay Incorporated and the University of Florida Research Foundation, Inc.	S-1/A	10.21(b)	12/16/15	
10.12(a)†	ViewRay Incorporated 2008 Stock Incentive Plan.	S-1/A	10.24(a)	12/16/15	
10.12(b)†	Form of Incentive Stock Option and Reverse Vesting Agreement (Change of Control) under the 2008 Plan.	S-1/A	10.24(b)	12/16/15	
10.12(c)†	Form of Incentive Stock Option and Reverse Vesting Agreement under the 2008 Plan.	S-1/A	10.24(c)	12/16/15	
10.12(d)†	Form of Nonstatutory Stock Option and Reverse Vesting Agreement under the 2008 Plan.	S-1/A	10.24(d)	12/16/15	
10.13(a)†	ViewRay, Inc. 2015 Equity Incentive Award Plan.	S-1/A	10.26(a)	12/16/15	
10.13(b)†	Form of Option Agreement under the 2015 Plan.	S-1/A	10.26(b)	12/16/15	
10.13(c)†	Form of Restricted Stock Agreement under the 2015 Plan.	S-1/A	10.26(c)	12/16/15	
10.13(d)†	Form of Restricted Stock Unit Agreement under the 2015 Plan.	S-1/A	10.26(d)	12/16/15	
10.13(e)†	ViewRay, Inc. Amended and Restated 2015 Equity Incentive Award Plan.	S-8	99.1	6/26/20	
10.13(f)†	Amended and restated 2015 Equity Incentive Award Plan Performance Share Award Grant Notice.	10-Q	10.10	11/5/21	

Exhibit Number	Description	Incorporated by Reference			Filed Herewith
		Form	Exhibit	Date Filed	
10.13(g)†	ViewRay, Inc. Amended and Restated 2015 Equity Incentive Award Plan, as amended through June 10, 2022.	S-8	99.2	6/14/22	
10.14†	Form of Indemnification Agreement for directors and executive officers.	S-1/A	10.27	12/16/15	
10.15(a)†	ViewRay, Inc. 2015 Employee Stock Purchase Plan.	S-1/A	10.29	12/16/15	
10.15(b)†	ViewRay, Inc. 2015 Employee Stock Purchase Plan, as amended February 27, 2020.	10-K	10.26(b)	3/12/20	
10.16†	ViewRay, Inc. 2018 Equity Inducement Award Program.	S-8	99.1	8/10/18	
10.17	Securities Purchase Agreement, dated as of October 23, 2017, by and among ViewRay, Inc. and Fosun International Limited named therein.	8-K	10.1	10/25/17	
10.18	Amended and Restated Securities Purchase Agreement, dated as of March 5, 2018, by and among ViewRay, Inc. and Fosun International Limited named therein	10-K	10.40	3/12/18	
10.19	Warrant Agreement, effective February 25, 2018, by and between ViewRay Inc. and Strong Influence Limited.	10-K	10.42	3/12/18	
10.20	Vanni Business Park Industrial Lease by and between Vanni Business Park, LLC and ViewRay, Inc. dated April 11, 2018.	10-Q	10.1	8/7/18	
10.21	Second Amendment to Office Lease by and between BXP Research Park LP and ViewRay, Inc. dated September 1, 2018.	10-Q	10.2	8/7/18	
10.22+	Agreement made as of October 1, 2020, by and among ViewRay Technologies, Inc., ViewRay, Inc. and Siemens Healthcare GmbH.	8-K	10.1	10/7/20	
10.23+	Development and Supply Agreement, effective April 4, 2022, by and between ViewRay Technologies, Inc. and Siemens Healthcare GmbH.	10-Q	10.3	5/6/22	
10.24	Cooperation Agreement dated March 8, 2022, by and between ViewRay, Inc. and Hudson Executive Capital LP, on behalf of itself and certain of its affiliates.	8-K	10.1	3/9/22	
10.25	Cooperation Agreement dated January 20, 2023, by and between ViewRay, Inc. and Hudson Executive Capital LP, on behalf of itself and certain of its affiliates.	8-K	10.1	1/20/23	
10.26	Credit, Security and Guaranty Agreement dated as of November 14, 2022, by and among ViewRay, Inc., ViewRay Technologies, Inc., MidCap Financial Trust and Silicon Valley Bank.				X
10.27†	Employment Agreement, dated July 22, 2018, by and between ViewRay Inc. and Scott Drake.	10-Q	10.5	8/7/18	
10.28†	Amendment to Employment Agreement, dated December 20, 2018 by and between ViewRay Inc. and Scott Drake.	10-K	10.51	3/15/19	
10.29†	Second Amendment to Employment Agreement, dated February 27, 2023 by and between ViewRay Inc. and Scott Drake.				X
10.30†	Offer Letter to Zachary Stassen dated April 20, 2020.	8-K	10.1	4/30/20	
10.31†	General Release of Claims, dated January 6, 2023, by and between ViewRay, Inc. and Zachary Stassen.				X
10.32†	Offer Letter to William Burke dated January 6, 2023.				X
21	List of Subsidiaries.				X
23.1	Consent of Deloitte & Touche LLP.				X
31.1	Certification of Principal Executive Officer Required under Securities Exchange Act Rule 13a-14(a) and 15d-14(a).				X
31.2	Certification of Principal Financial Officer under Securities Exchange Act Rule 13a-14(a) and 15d-14(a).				X
32.1	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. 1350 and Securities Exchange Act Rule 13a-14(b).				X
101.INS	Inline XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL Document				X
101.SCH	Inline XBRL Taxonomy Schema Document.				X
101.CAL	Inline XBRL Taxonomy Calculation Linkbase Document.				X

Exhibit Number	Description	Incorporated by Reference			Filed Herewith
		Form	Exhibit	Date Filed	
101.DEF	Inline XBRL Taxonomy Definition Linkbase Document.				X
101.LAB	Inline XBRL Taxonomy Label Linkbase Document.				X
101.PRE	Inline XBRL Taxonomy Presentation Linkbase Document.				X
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)				X

Portions of this exhibit (indicated by asterisks) have been omitted pursuant to a request for confidential treatment and this exhibit has been filed separately with the SEC.
† Indicates management contract or compensatory plan.
+ Certain confidential information contained in this exhibit has been omitted because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

Item 16. FORM 10-K SUMMARY

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on February 28, 2023.

VIEWRAY, INC.

By: /s/ Scott Drake
Scott Drake
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Scott Drake Scott Drake	Director, President and Chief Executive Officer (Principal Executive Officer)	February 28, 2023
/s/ William Burke William Burke	Chief Financial Officer (Principal Financial and Accounting Officer)	February 28, 2023
/s/ Daniel Moore Daniel Moore	Chairman of the Board	February 28, 2023
/s/ Caley Castelein, M.D. Caley Castelein, M.D.	Director	February 28, 2023
/s/ B. Kristine Johnson B. Kristine Johnson	Director	February 28, 2023
/s/ Karen N. Prange Karen N. Prange	Director	February 28, 2023
/s/ Brian K. Roberts Brian K. Roberts	Director	February 28, 2023
/s/ Susan C. Schnabel Susan C. Schnabel	Director	February 28, 2023
/s/ Phillip M. Spencer Phillip M. Spencer	Director	February 28, 2023
/s/ Gail Wilensky, Ph.D. Gail Wilensky, Ph.D.	Director	February 28, 2023

CREDIT, SECURITY AND GUARANTY AGREEMENT

dated as of November 14, 2022

by and among

VIEWRAY TECHNOLOGIES, INC., VIEWRAY, INC.,

each as Borrower and any additional borrower that hereafter becomes party hereto, each as Borrower, and collectively as Borrowers,

and

any guarantor that hereafter becomes party hereto, each as Guarantor, and collectively as Guarantors,

and

MIDCAP FUNDING IV TRUST,

as Agent,

MIDCAP FINANCIAL TRUST,

as Term Loan Servicer,

SILICON VALLEY BANK and MIDCAP FINANCIAL TRUST,

as Co-Lead Arrangers

and

THE LENDERS

FROM TIME TO TIME PARTY HERETO

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CREDIT, SECURITY AND GUARANTY AGREEMENT

This **CREDIT, SECURITY AND GUARANTY AGREEMENT** (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of November 14, 2022 by and among **VIEWRAY, INC.**, a Delaware corporation ("**Viewray**"), VIEWRAY TECHNOLOGIES, INC.**,** a Delaware corporation ("**Viewray Technologies**"), and any additional borrower that may hereafter be added to this Agreement and each of their successors and permitted assigns (together with Viewray Technologies and Viewray, each individually as a "**Borrower**", and collectively, the "**Borrowers**"), any entities that become party hereto as Guarantors and each of their successors and permitted assigns (each individually, a "**Guarantor**" and collectively, with each of their successors and assigns, the "**Guarantors**"), **MIDCAP FUNDING IV TRUST**, as Agent, **MIDCAP FINANCIAL TRUST,** as Term Loan Servicer, and the financial institutions or other entities from time to time parties hereto, each as a Lender.

RECITALS

The Credit Parties have requested that Lenders make available to Borrowers the financing facilities as described herein. Lenders are willing to extend such credit to Borrowers under the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Credit Parties, Lenders, Agent and Term Loan Servicer agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Revolving Loan Commitment or Term Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, and (d) all Proceeds of any of the foregoing.

"**Acquisition**" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition (including through licensing) of all or substantially all of the assets of a Person, or of any business, line of business or division or other unit of operation of a Person, (b) the acquisition of fifty percent (50%) or more of the Equity Interests of any Person, whether or not involving a merger or consolidation with such other Person, or otherwise causing any Person to become a Subsidiary of a Credit Party, (c) any merger or consolidation or any other combination with

another Person or (d) the acquisition (including through licensing) of any Product, Product line or Intellectual Property of or from any other Person (but in each case excluding in-bound licenses of, and purchases of, over-the-counter and other software that is commercially available to the public and open source licenses in the Ordinary Course of Business) or any assets constituting a business unit, line of business or division of such other Person.

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Additional Tranche**" means an additional amount of Revolving Loan Commitment equal to $10,000,000 (it being acknowledged that multiple Additional Tranches are permitted pursuant to Section 2.1(c) in minimum amounts of $2,000,000 each for a total of up to $10,000,000).

"**Affected Financial Institution**" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles). As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote ten percent (10%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agent**" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws or general or specific licenses administered by OFAC.

"**Applicable Floor**" means (a) with respect to Revolving Loans, rate per annum of interest equal to six and one quarter percent (6.25%), (b) with respect to Term Loans and all other Obligations, rate per annum of interest equal to nine and one quarter percent (9.25%).

"Applicable Interest Rate" means, with respect to all Obligations, the greater of (i) Prime Rate *plus* the Applicable Margin, and (ii) the Applicable Floor.

"**Applicable Margin**" means (a) with respect to Revolving Loans, one half of one percent (0.50%) and (b) with respect to Term Loans and all other Obligations, three and one half percent (3.50%).

"**Applicable Minimum Backlog Threshold**" means (a) for each Defined Period ending on or before December 31, 2023, the minimum Backlog amount set forth on Schedule 6.2 attached hereto for such Defined Period, and (b) for each Defined Period ending after December 31, 2023, a minimum Backlog amount for such Defined Period to be determined by Agent and Required Lenders (in consultation with Borrower) in good faith on or prior to February 28th of the year ending prior to the year in which such Defined Period ends based upon the most recent financial information provided by Borrower to Agent pursuant to Section 4.1 of this Agreement; *provided* that in no event shall the minimum Backlog for any such Defined Period be less than 110% of the actual Backlog for the applicable Defined Period ending one year prior thereto.

"**Applicable Minimum Net Revenue Threshold**" means the minimum Net Revenue amount set forth on Schedule 6.1 attached hereto for such Defined Period.

"**Approved Fund**" means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other disposition (including by merger, allocation of assets (including allocation of assets to any series of a limited liability company), division, consolidation or amalgamation, but excluding dispositions resulting from any casualty or other damage to, any property or asset) by any Credit Party or any Subsidiary thereof of any asset of such Credit Party or such Subsidiary.

"**Assignment Agreement**" means an assignment agreement in substantially the form attached hereto as Exhibit G or such other form that is acceptable to Agent and, as applicable, Borrower Representative.

"**Assignment of Claims Act**" means the Assignment of Claims Act, 31 USC §3727, as amended.

"**Backlog**" means the aggregate dollar amount of customer (including distributors) orders of MRIdian systems for which revenue has not been recognized, but for which the Credit Parties, in their good faith business judgment based upon the Ordinary Course of Business and consistent with past practice, consider revenue to be reasonably likely to be recognized in the future; *provided* that Credit Parties shall perform a quarterly review of Backlog to verify that outstanding orders in Backlog remain valid, and based upon this review, orders that are no longer expected to result in revenue are removed from Backlog. Notwithstanding the foregoing, in order for any such customer orders to constitute Backlog for purposes of this Agreement, the Credit Parties must possess an outstanding and effective written agreement for the delivery of a MRIdian system signed by a customer with a minimum deposit or a letter of credit requirement, except when the sale is to a customer where a deposit is not deemed necessary or customary in the Ordinary Course of Business.

"**Backlog Report**" means a written report, appropriately completed and in the form attached hereto as Exhibit H prepared by Borrowers on a quarterly basis that details the calculation of Backlog for the Defined Period ending on the last day of the applicable fiscal quarter and the orders and transactions related thereto and an evaluation against the Borrowers' stated criteria for determining that such orders meet the criteria for inclusion in Backlog, together with such back-up documentation (including, without limitation, a quarter-to-quarter analysis detailing new gross orders, cancellations, age-outs, drop-outs and system installation-related product revenue) as Agent shall reasonably require in support thereof.

"**Bail-In Action**" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"**Bail-In Legislation**" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar sanctions list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law, or (f) any Person resident in, organized under the laws of or incorporated in a Sanctioned Country.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph hereto.

"**Borrower Representative**" means Viewray, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrowing Base**" means, the sum of:

(a) the product of (i) eighty percent (80%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts; *plus*

(b) the product of (i) eighty percent (80%) *multiplied by* (ii) the aggregate net amount at such time of the Eligible Foreign Accounts; *plus*

(c) the lesser of (i) fifty percent (50%) *multiplied by* the Orderly Liquidation Value of the Eligible Inventory, or (ii) fifty percent (50%) *multiplied by* (ii) the value of the Eligible Inventory, valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and other incentives or rewards associated with the purchase of the applicable Inventory; *minus*

(d) the amount of any reserves and/or other adjustments provided for in this Agreement;

provided, that the Borrowing Base shall automatically be adjusted down, if necessary, such that (i) the aggregate availability from Eligible Inventory shall never exceed an amount equal to $5,000,000, as of any date of determination, and (ii) the aggregate availability from Eligible Foreign Accounts shall never exceed $1,500,000 in the aggregate; and *provided further* that (x) if a reasonably satisfactory initial collateral audit and analysis by Agent following the Closing Date (the "**Initial Audit**") is not completed by the date that is three (3) months after the Closing Date, the Borrowing Base shall be capped at $2,500,000 until the earlier of (A) the completion of the Initial Audit, and (B) the date that is six (6) months after the Closing, and (y) if the Initial Audit is not completed by the date that is six (6) months after the Closing Date, the Borrower Base shall be deemed to zero Dollars ($0) until the date on which the Initial Audit is completed.

"**Borrowing Base Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in Washington, DC and New York City are authorized by Law to close.

"**Capital Lease**" of any Person means any lease of any property by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person.

"**Cash Equivalents**" means, as of any date of determination, any of the following: (a) marketable securities (i) issued or directly and unconditionally guaranteed as to interest and principal by the United States government, or (ii) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within one (1) year after such date; (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one (1) year after such date and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (c) commercial paper maturing no more than one (1) year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally; (d) certificates of deposit or bankers' acceptances maturing within one (1) year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (i) is at least "adequately capitalized" (as defined in the regulations of its primary federal banking regulator), and (ii) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (e) shares of any money market mutual fund that (i) has substantially all of its assets invested continuously in the types of investments referred to in clauses (a) and (b) above, (ii) has net assets of not less than $500,000,000, and (iii) has the highest rating obtainable from either S&P or Moody's.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq*., as the same may be amended from time to time.

"**CFC**" means an entity that is a controlled foreign corporation within the meaning of Section 957 of the Code.

"**Cash Dominion Event**" means (a) the occurrence and continuance of any Event of Default or (b) the aggregate Credit Party Unrestricted Cash is less than an amount equal to the greater of (i) $50,000,000, and (ii) an amount equal to 110% of the combined aggregate outstanding principal balance of the Term Loans and the Revolving Loans for a period of ten (10) consecutive Business Days (such amount, the "**Minimum Cash Amount**").

"**Cash Dominion Period**" means each period beginning immediately upon the occurrence of a Cash Dominion Event and ending on the date that both (a) no Event of Default exists and is continuing and (b) Agent has received satisfactory evidence that the aggregate Credit Party Unrestricted Cash has been equal to or greater than the Minimum Cash Amount for a period of ten (10) consecutive Business Days following the occurrence of the applicable Cash Dominion Event.

"**Change in Control**" means any of the following events: (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of thirty-five percent (35%) or more of the combined voting power of all voting stock of Viewray on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right), but excluding any such "person" or "group" that owns, on the date hereof, at least thirty-five percent (35%) of the combined voting power of all voting stock of Viewray, as so determined; (b) any Credit Party ceases to own, directly or indirectly, 100% of the capital stock of any of its Subsidiaries (with the exception of any Subsidiaries permitted to be dissolved, merged or otherwise disposed of to the extent otherwise permitted by this Agreement); or (c) the occurrence of a "Change of Control", "Fundamental Change", "Change in Control", "Deemed Liquidation Event" or terms of similar import under any document or instrument governing or relating to Debt of or Equity Interests of such Person. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the SEC under the Securities Exchange Act of 1934.

"**Closing Date**" means the date of this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time, any successor statutes thereto, and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

"**Collateral**" means all property, other than Excluded Property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and Lenders, pursuant to this Agreement and the Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto.

"**Commitment Annex**" means Annex A to this Agreement.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**Consolidated Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of Viewray (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation**" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"**Controlled Group**" means all members of a group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with the Credit Parties, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA and, solely for purposes of Section 412 and 436 of the Code, Section 414(m) or (o) of the Code.

"**Correction**" means repair, modification, adjustment, relabeling, destruction or inspection (including patient monitoring) of a Product without its physical removal to some other location.

"**Credit Card Cash Collateral Account**" means, collectively, each segregated Deposit Account from time to time identified to Agent in writing established by Borrower for the sole purpose of securing Borrower's obligations under clause (k) of the definition Permitted Debt and containing only such cash or Cash Equivalents that have been required to be pledged to secure such obligations of Borrower; *provided*, that the aggregate amount of cash or Cash Equivalents deposited in all such Credit Card Cash Collateral Account(s) does not, at any time, exceed $1,600,000 in the aggregate.

"**Credit Party**" means each Borrower and each Guarantor; and "**Credit Parties**" means all such Persons, collectively; *provided, however*, that, for the avoidance of doubt, in no event shall any Restricted Foreign Subsidiary be deemed to be or otherwise required to be a "**Credit Party**" for purposes of this Agreement or the other Financing Documents.

"**Credit Party Unrestricted Cash**" means unrestricted cash and cash equivalents of Credit Parties that are (a) subject to a first priority perfected lien in favor of Agent for the benefit of Lenders, (b) held in the name of a Borrower in a Deposit Account or Securities Account at Silicon Valley Bank or an Affiliate thereof that, in each case, is subject to a Deposit Account Control Agreement or Securities Account Control Agreement (as applicable), and (c) not funds for the payment of a drawn or committed but unpaid draft, ACH or EFT transaction.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all Capital Leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all Disqualified Equity Interests, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, (j) all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing, and (k) obligations in respect of litigation settlement agreements or similar arrangements. Without duplication of any of the foregoing, Debt of Credit Parties shall include any and all Loans.

"**Debtor Relief Laws**" means the Bankruptcy Code and all other liquidation, bankruptcy, assignment for the benefit of creditors, conservatorship, moratorium, receivership, insolvency, rearrangement, reorganization or similar debtor relief Laws of the United States or other applicable jurisdictions in effect from time to time.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defaulted Lender**" means, (i) so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document, (ii) any Lender that has notified the Credit Parties or Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable Default or Event of Default, shall be specifically identified in such writing or public statement) cannot be satisfied), or (iii) any Lender that has, or has a direct or indirect parent company that has, (a) become the subject of any proceeding under the Bankruptcy Code or any other insolvency, debtor relief or debt adjustment or similar law (whether state, provincial, territorial, federal or foreign), or (b) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided, that a Lender shall not be a Defaulted Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulted Lender under any one or more of clauses (i) through (iii) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulted Lender upon delivery of written notice of such determination to Agent and each Lender.

"**Deferred Revenue**" is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

"**Defined Period**" means for any given calendar quarter or date of determination, the immediately preceding twelve (12) month period ending on the last day of such calendar quarter or if such date of determination is not the last day of a calendar quarter, the twelve (12) month period immediately preceding any such date of determination.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Credit Party.

"**Deposit Account Control Agreement**" means an agreement, in form and substance reasonably satisfactory to Agent, among Agent, any Credit Party and each financial institution in which such Credit Party maintains a Deposit Account (which is not an Excluded Account), which agreement provides that such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Credit Party, including as to any such agreement pertaining to any Lockbox Account, providing that such financial institution shall, at the direction of Agent, wire, or otherwise transfer, in immediately available funds, on a daily basis to the Revolving Loan Payment Account or a Borrower operating deposit account (as applicable) all funds received or deposited into such Lockbox or Lockbox Account.

"**Disqualified Equity Interests**" means, with respect to any Person, any Equity Interest in such Person that, within less than 91 days after the Termination Date, either by its terms (or by the terms of any security or any other Equity Interests into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition, (a) matures or is mandatorily redeemable (other than solely for Permitted Debt or other Equity Interests in such Person or of Viewray that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof, in whole or in part (other than solely for Permitted Debt or other Equity Interests in such Person or of Viewray that do not constitute Disqualified Equity Interests and cash in lieu of fractional shares of such Equity Interests), (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is or becomes convertible into or exchangeable for Debt (other than Permitted Debt) or any other Equity Interest that would constitute Disqualified Equity Interests.

"**Distribution**" means as to any Person (a) any dividend or other distribution or payment (whether in cash, securities or other property) on, or in respect of, any Equity Interest in such Person (except those payable solely in its Equity Interests other than Disqualified Equity Interests), and (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any Equity Interests in such Person or any claim respecting the purchase or sale of any Equity Interest in such Person, or (ii) any option, warrant or other right to acquire any Equity Interests in such Person.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**EEA Financial Institution**" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"**EEA Member Country**" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"**EEA Resolution Authority**" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"**Eligible Account**" means, subject to the criteria below, an account receivable of a Borrower, which was generated in the Ordinary Course of Business and originally in the name of a Borrower and not acquired via assignment or otherwise, and which Agent, in its Permitted Discretion, deems to be an Eligible Account. The net amount of an Eligible Account at any time shall be (a) the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent's option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time, and (b) adjusted by applying percentages (known as "**liquidity factors**") by payor and/or payor class based upon the applicable Borrower's actual recent collection history for each such payor and/or payor class in a manner consistent with Agent's underwriting practices and procedures as determined in Agent's Permitted Discretion. Such liquidity factors may be adjusted by Agent from time to time as warranted by Agent's underwriting practices and procedures and using Agent's Permitted Discretion. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(a) the Account remains unpaid more than one hundred and twenty (120) days past the claim or invoice date (but in no event more than one hundred and eighty (180) days after the applicable goods or services have been rendered or delivered);

(b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;

(e) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any Law or the Account represents a progress billing for which services have not been fully and completely rendered;

(f) the Account is subject to a Lien (other than Liens in favor of Agent or Permitted Liens that have been expressly subordinated to the Liens of Agent or that arise solely by operation of law), or Agent does not have a first priority, perfected Lien on such Account;

(g) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;

(h) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or if the Account Debtor holds any Debt of a Credit Party;

(i) more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);

(j) the total unpaid Accounts of the Account Debtor obligated on the Account exceed thirty percent (30%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such thirty percent (30%) limitation shall be considered ineligible);

(k) any covenant, representation or warranty contained in the Financing Documents with respect to such Account has been breached in any material respect (with respect to covenants) or is incorrect in any material respect (with respect to representations and warranties);

(l) the Account is unbilled or has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor;

(m) the Account is an obligation of an Account Debtor that is the federal, state or local government or any political subdivision thereof, unless, to the extent required pursuant to Section 9.2, the applicable Borrower assigns its right to payment of such Account to Agent pursuant to the federal Assignment of Claims Act (to the extent applicable) and has otherwise complied with applicable statutes or ordinances necessary for Agent or Lenders to enforce their rights and collect amounts due in respect of such Account;

(n) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or the Account is an Account as to which any facts, events or occurrences exist which could reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;

(o) the Account Debtor (i) has its principal place of business or executive office outside the United States or (ii) whose billing address (as set forth in the applicable invoice for such Account) is not in the United States;

(p) the Account is payable in a currency other than United States dollars;

(q) the Account Debtor is an individual;

(r) the Borrower owning such Account has not signed and delivered to Agent notices, to the extent requested by Agent, directing the Account Debtors to make payment to the applicable Lockbox Account;

(s) the Account includes late charges or finance charges (but only such portion of the Account shall be ineligible);

(t) the Account arises out of the sale of any Inventory upon which any other Person holds, claims or asserts a Lien (other than Permitted Liens arising solely by operation of law, Liens in favor of Agent or Liens that have been expressly subordinated to the Liens of Agent);

(u) any Accounts with customer deposits and/or with respect to which Borrower has received an upfront payment to the extent of such customer deposit and/or upfront payment;

(v) any Accounts owing from an Account Debtor with respect to which Borrower has received Deferred Revenue (but only to the extent of such Deferred Revenue); or

(w) the Account or Account Debtor fails to meet such other specifications and requirements which may from time to time be established by Agent in its Permitted Discretion, including, without limitation, on the basis of the initial collateral audit conducted by Agent following the Closing Date.

"**Eligible Assignee**" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; provided, however, that notwithstanding the foregoing, (x) so long as no Event of Default has occurred and is continuing, (i) "**Eligible Assignee**" shall not include any Credit Party or any of a Credit Party's Subsidiaries, and (y) no proposed assignee intending to assume all or any portion of the Revolving Loan Commitment or any unfunded portion of the Term Loan Commitments shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment or Term Loan Commitments, or has been approved as an Eligible Assignee by Agent.

"**Eligible Foreign Account**" means an account receivable of a Borrower that is an obligation of an Eligible Foreign Account Debtor and is excluded from Eligible Accounts under clause (o) of the definition of "Eligible Account", but otherwise constitutes an "Eligible Account".

"**Eligible Foreign Account Debtor**" means each Account Debtor that has its principal place of business or executive office located in Belgium, Netherlands, United Kingdom, France or Italy and any other Account Debtor that has its principal place of business or executive office outside the United States as Agent may agree to from time to time in writing in its Permitted Discretion.

"**Eligible Inventory**" means Inventory owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that Agent, in its Permitted Discretion, deems to be Eligible Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory if:

(a) such Inventory is not owned by a Borrower free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower's performance with respect to that Inventory) except for Permitted Liens arising solely by operation of law, Liens in favor of Agent or Liens that have been expressly subordinated to the Liens of Agent;

(b) such Inventory is placed on consignment or is in transit;

(c) such Inventory is covered by a negotiable document of title, unless such document has been delivered to Agent with all necessary endorsements, free and clear of all Liens except for Permitted Liens arising solely by operation of law and those in favor of Agent;

(d) such Inventory is excess, obsolete, unsalable, shopworn, seconds, damaged, unfit for sale, unfit for further processing, is of substandard quality or is not of good and merchantable quality;

(e) such Inventory consists of marketing materials, display items or packing or shipping materials, manufacturing supplies or Work-In-Process;

(f) such Inventory is not subject to a first priority Lien in favor of Agent;

(g) such Inventory consists of goods that can be transported or sold only with licenses that are not readily available, obtained or assigned to Agent or of Hazardous Materials in concentrations or amounts that violate applicable Environmental Law;

(h) such Inventory is not covered by casualty insurance acceptable to Agent;

(i) any covenant, representation or warranty contained in the Financing Documents with respect to such Inventory has been breached in any material respect;

(j) such Inventory is located (i) outside of the continental United States or (ii) on premises where the aggregate amount of all Inventory (valued at cost) of Borrowers located thereon is less than $10,000;

(k) such Inventory is located on premises with respect to which Agent has not received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to Agent unless Agent has instituted a reserve in an amount equal to three (3) months' rent or third party charges, as applicable, in respect of such location;

(l) such Inventory consists of (A) discontinued items, (B) slow-moving or excess items held in inventory, or (C) used items held for resale;

(m) such Inventory does not consist of finished goods or finished component parts of MRIdian systems;

(n) such Inventory does not meet all standards imposed by any Governmental Authority, including with respect to its production, acquisition or importation (as the case may be);

(o) such Inventory has an expiration date within the next six (6) months;

(p) [reserved];

(q) such Inventory is held for rental or lease by or on behalf of Borrowers;

(r) such Inventory is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third parties, which agreement restricts the ability of Agent or any Lender to sell or otherwise dispose of such Inventory; or

(s) such Inventory fails to meet such other specifications and requirements which may from time to time be established by Agent in its Permitted Discretion, including, without limitation, on the basis of the initial collateral audit conducted by Agent following the Closing Date. Agent and Borrowers agree that Inventory shall be subject to periodic appraisal by Agent and that valuation of Inventory shall be subject to adjustment pursuant to the results of such appraisal. Notwithstanding the foregoing, the valuation of Inventory shall be subject to any legal limitations on sale and transfer of such Inventory.

"**Environmental Laws**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean-up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Credit Party and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"**Equipment**" means "equipment" as defined in Article 9 of the UCC.

"**Equity Interests**" means, with respect to any Person, all shares of capital stock, partnership interests, membership interests in a limited liability company or other ownership in participation or equivalent interests (however designated, whether voting or non-voting) of such Person's equity capital (including any warrants, options or other purchase rights with respect to the foregoing), whether now outstanding or issued after the Closing Date.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA Plan**" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Credit Party or any Subsidiary maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Credit Party or any Subsidiary has any liability, including on account of any member of the Controlled Group, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"**Erroneous Payment**" has the meaning specified therefor in Section 13.20.

"**Erroneous Payment Deficiency Assignment**" has the meaning specified therefor in Section 13.20.

"**Erroneous Payment Impacted Loans**" has the meaning specified therefor in Section 13.20.

"**Erroneous Payment Return Deficiency**" has the meaning specified therefor in Section 13.20.

"**EU Bail-In Legislation Schedule**" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Excluded Accounts**" means (a) segregated Deposit Accounts into which there is deposited no funds other than those intended solely to cover wages and payroll for employees of a Credit Party for a period of service no longer than two weeks at any time (and related contributions to be made on behalf of such employees to health and benefit plans) plus balances for outstanding checks for wages and payroll from prior periods, (b) segregated Deposit Accounts constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the tax obligations of such employees, (c) segregated Deposit Accounts constituting trust, fiduciary and escrow accounts in which there is not maintained at any point in time funds on deposit greater than $500,000 in the aggregate for all such accounts, (d) subject to Section 7.4, the JPMorgan Chase checking account set forth on the Perfection Certificate on the Closing Date (the "**Closing Date JPM Account**"); *provided* that the aggregate funds on deposit in the Closing Date JPM Account do not, at any time, exceed $100,000, (e) subject to Section 7.4, those certain deposit accounts of Borrower ending in 0758, -6164 and -5109 at PNC Bank set forth on the Perfection Certificate on the Closing Date (collectively, the "**Closing Date PNC Accounts**"); *provided* that the aggregate funds on deposit in the Closing Date PNC Accounts do not, at any time, exceed $1,250,000, and (f) Deposit Accounts or Securities Accounts holding cash or Cash Equivalents described in clause (o), (p) and (q) of the definition Permitted Liens (and subject to the cap set forth therein); *provided* that the accounts described in clauses (a) through (f) above shall be used solely for the purposes described in such clauses.

"**Excluded Perfection Assets**" means, collectively:

(a) Excluded Accounts;

(b) letter of credit rights with a value of less than $100,000 individually or $250,000 in the aggregate (other than to the extent consisting of a supporting obligation or that can be perfected by the filing of a UCC financing statement);

(c) commercial tort claims where the amount of damages claimed by the applicable Credit Party is less than $250,000 in the aggregate for all such commercial tort claims;

(d) Electronic Chattel Paper or tangible Chattel Paper, in each case, with a value of less than $100,000 individually or $250,000 in the aggregate (other than to the extent consisting of a supporting obligation or that can be perfected by the filing of a UCC financing statement); and

(e) motor vehicles, aircraft and other assets subject to certificates of title with an aggregate net book value (as reasonably determined by the Borrowers) of less than $250,000 (other than to the extent a security interest thereon can be perfected by the filing of a financing statement under the UCC).

"**Excluded Property"** means, collectively:

(a) prior to the occurrence of a Springing IP Lien Event, all Intellectual Property except (i) to the extent that it is necessary under applicable law to have a Lien and security interest in any such Intellectual Property in order to have a perfected Lien and security interest in and to IP Proceeds (defined below), and for the avoidance of any doubt, the Collateral shall include, and Agent shall have a Lien and security interest in, (A) all IP Proceeds, and (B) all payments with respect to IP Proceeds that are received after the commencement of a bankruptcy or insolvency proceeding, and (ii) Intellectual Property constituting computer programs, tapes, programs, discs, information, records, and data, all computers, word processors, printers, switches, interfaces, web servers, website service contracts, internet connection contract or line lease, website hosting service contract, website license agreements, back-up copies of website content, contracts with website advertisers, technology escrow agreements, website content development agreements, all rights, of whatever form, in and to domain names, instructional material, and connectors and all parts, accessories, additions, substitutions, or options together with all property or equipment used in connection with any of the above or which are used to operate or cause to operate any features, special applications, format controls, options or software of any or all of the above-mentioned items, in all cases of this clause (ii), solely to the extent needed to assist in the enforcement of a security interest against the Accounts; *provided*, *however*, that, upon the occurrence of a Springing IP Lien Event and continuing at all times thereafter (whether or not the Springing IP Lien Event continues), Intellectual Property shall no longer constitute "Excluded Property" pursuant to this clause (a) and "Collateral" shall immediately include all Intellectual Property of each Credit Party (including, for the avoidance of doubt, all IP Proceeds) automatically and without notice or any further action by Agent, any Lender or any Credit Party;

(b) any lease, license, contract, permit, letter of credit, purchase money arrangement, instrument or agreement to which any Credit Party is a party or any of its rights or interests thereunder if and to the extent that the grant of such security interest shall constitute a result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Credit Party therein or (ii) result in a breach or termination pursuant to the terms of, or default under, any such lease, license, contract, permit, letter of credit, purchase money arrangement, instrument or agreement;

(c) any governmental licenses or state or local franchises, charters and authorizations, to the extent that Agent may not validly possess a security interest in any such license, franchise, charter or authorization under applicable Law;

(d) any asset which is subject to a purchase money Lien or Capital Lease permitted hereunder to the extent the granting of a security interest in such asset is prohibited pursuant to the terms of the contract governing such purchase money Lien or Capital Lease;

(e) any "intent-to-use" trademarks or service mark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051 Section 1(c) or Section 1(d), respectively or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively by the United States Patent and Trademark Office; and

(f) more than 65% of the voting capital stock of any Restricted Foreign Subsidiary to the extent that the pledge of a greater percentage of such voting stock would reasonably be expected to have a material adverse tax consequence to such Borrower.

provided that (x) any such limitation described in the foregoing clauses (a) and (b) on the security interests granted hereunder shall apply only to the extent that any such prohibition could not be rendered ineffective pursuant to the UCC or any other applicable Law (including Sections 9-406, 9-407 and 9-408 of the UCC) or principles of equity, (y) in the event of the termination or elimination of any such prohibition or the requirement for any consent contained in such contract, agreement, permit, lease or license or in any applicable Law, to the extent sufficient to permit any such item to become Collateral hereunder, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such contract, agreement, permit, lease, license, franchise, authorization or asset shall be automatically and simultaneously granted hereunder and shall be included as Collateral hereunder, and (z) all rights to payment of money due or to become due pursuant to, and all products and Proceeds (and rights to the Proceeds) from the sale of, any Excluded Property shall be and at all times remain subject to the security interests created by this Agreement (unless such Proceeds would independently constitute Excluded Property).

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Agent, Term Loan Servicer, any Lender or any other recipient of any payment to be made by or on behalf of any obligation of the Credit Parties hereunder or the Obligations or required to be withheld or deducted from a payment to Agent, Term Loan Servicer, such Lender or such recipient (including any interest and penalties thereon): (a) Taxes to the extent imposed on or measured by Agent's, Term Loan Servicer's any Lender's or such recipient's net income (however denominated), branch profits Taxes, and franchise Taxes and similar Taxes, in each case, (i) imposed by the jurisdiction (or any political subdivision thereof) under which Agent, Term Loan Servicer, such Lender or such recipient is organized, has its principal office or conducts business with respect to entering into any of the Financing Documents or taking any action thereunder or (ii) that are Other Connection Taxes; (b) in the case of a Lender, United States withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Loans pursuant to a Law in effect on the date on which (i) such Lender becomes a party to this Agreement other than as a result of an assignment requested by a Credit Party under Section 2.8(i) or Section 11.17(c) or (ii) such Lender changes its lending office for funding its Loan, except in each case to the extent that, pursuant to Section 2.8, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Revolving Loan Commitments or Term Loan Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to Agent's, Term Loan Servicer's, such Lender's or such recipient's failure to comply with Section 2.8(c); and (d) any U.S. federal withholding taxes imposed in respect of a Lender under FATCA.

"**FATCA**" means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future U.S. Treasury regulations or official interpretations thereof and any agreement entered into pursuant to the implementation of Section 1471(b)(1) of the Code, and any intergovernmental agreement between the United States Internal Revenue Service, the U.S. Government and any governmental or taxation authority under any other jurisdiction which agreement's principal purposes deals with the implementation of such sections of the Code.

"**FDA**" means the Food and Drug Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**FDCA**" means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided*, *however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent in a commercially reasonable manner.

"**Fee Letter**" means each agreement between Agent (and to the extent applicable Term Loan Servicer) and Borrower relating to fees payable to Agent and/or Lenders in connection with this Agreement.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, each Fee Letter, each subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt are subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Foreign Lender**" has the meaning set forth in Section 2.8(c)(i).

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Good Manufacturing Practices**" means current good manufacturing practices, as set forth in 21 C.F.R. Parts 210 and 211.

"**Government Contract**" means any contract between the United States or any department, agency or instrumentality of the United States and a Credit Party.

"**Governmental Account Debtor**" means any Account Debtor that is a Governmental Authority, including, without limitation, the Government Account Debtors listed on Schedule 1.1(b) hereto.

"**Governmental Authority**" means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Gross Margin Percentage**" means for any Defined Period, the quotient of (a) gross revenue of Viewray Technologies and its Consolidated Subsidiaries for such Defined Period (as determined in accordance with GAAP) *minus* total cost of revenue of Viewray Technologies and its Consolidated Subsidiaries for such Defined Period (as determined in accordance with GAAP) *divided by* (b) gross revenue of Viewray Technologies and its Consolidated Subsidiaries for such Defined Period (as determined in accordance with GAAP), expressed as a percentage. For the avoidance of doubt, part (a) of the calculation of Gross Margin Percentage shall be calculated consistent with the calculation of "gross profit" in Viewray's Quarterly Report on Form 10-Q filed with the SEC for the fiscal quarter ended September 30, 2022 and part (b) of the calculation of Gross Margin Percentage shall be calculated consistent with the calculation of "Total revenue" in Viewray's Quarterly Report on Form 10-Q filed with the SEC for the fiscal quarter ended September 30, 2022.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided*, *however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means each Credit Party (other than a Borrower) that has executed or delivered, or shall in the future execute or deliver, this Agreement as a Guarantor or any other Guarantee of any portion of the Obligations.

"**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Law, including: (a) any "hazardous substance" defined as such in (or for purposes of) CERCLA, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (b) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**Healthcare Laws**" means all applicable Laws relating to the procurement, development, provision, clinical and non-clinical evaluation or investigation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling,

quality, reimbursement, sale, labeling, advertising, promotion, or postmarket requirements of any medical device or other product (including, without limitation, any ingredient or component of, or accessory to, the foregoing products) subject to regulation under the FDCA or otherwise by the FDA, and similar state or foreign laws, controlled substance laws, pharmacy laws, consumer product safety laws, Medicare, Medicaid, TRICARE, and all laws, policies, procedures, requirements and regulations pursuant to which Regulatory Required Permits are issued, in each case, as the same may be amended from time to time.

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrowers or any other Credit Party under any Financing Documents and (b) to the extent not otherwise described in (a), Other Taxes.

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**Intellectual Property**" means all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

"**Intellectual Property Security Agreement**" means an Intellectual Property Security Agreement in the form attached hereto as Exhibit I, which agreement shall become effective in accordance with the terms of Section 4.16(b).

"**Inventory**" means "inventory" as defined in Article 9 of the UCC.

"**Investment**" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make, commit to make or otherwise consummate any Acquisition, or (c) make, purchase or hold any advance, loan, extension of credit or capital contribution to or in, or any other investment in, any Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

"**IP Proceeds**" means, collectively, all cash, Accounts, license and royalty fees, claims, products, awards, judgments, insurance claims, and other revenues, proceeds or income, arising out of, derived from or relating to any Intellectual Property of any Credit Party, and any claims for damage by way of any past, present or future infringement of any Intellectual Property of any Credit Party (including, without limitation, all cash, royalty fees, other proceeds, Accounts and General Intangibles that consist of rights of payment to or on behalf of a Credit Party and the proceeds from the sale, licensing or other disposition of all or any part of, or rights in, any Intellectual Property by or on behalf of a Credit Party).

"**IRS**" has the meaning set forth in Section 2.8(c)(i).

"**Joinder Requirements**" has the meaning set forth in Section 4.11(c).

"**L/C Cash Collateral Accounts**" means, collectively, each segregated Deposit Account from time to time identified to Agent in writing established by Borrower for the sole purpose of securing Borrower's obligations under clause (h) of the definition Permitted Contingent Obligations and containing only such cash or Cash Equivalents that have been required to be pledged to secure such obligations of Borrower; *provided*, that the aggregate amount of cash or Cash Equivalents deposited in all such L/C Cash Collateral Accounts does not, at any time, exceed $4,000,000 in the aggregate.

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Healthcare Laws, Environmental Laws and applicable U.S. and non-U.S. export control laws and regulations, including without limitation the Export Administration Regulations.

"**Lender**" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing.

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Credit Party or any Subsidiary thereof shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Loan Account**" means the Term Loan Account or the Revolving Loan Account, as applicable.

"**Loan(s)**" means the Term Loan, the Revolving Loans and each and every advance under the Term Loan, or any combination of the foregoing, as the context may require. All references herein to the "making" of a Loan or words of similar import mean, with respect to the Term Loan, the making of any advance in respect of a Term Loan.

"**Lockbox**" has the meaning set forth in Section 2.11(a).

"**Lockbox Account**" means a segregated account or segregated accounts maintained at the Lockbox Bank into which collections of Accounts are paid.

"**Lockbox Bank**" has the meaning set forth in Section 2.11.

"**Margin Stock**" means "margin stock" as such term is defined in Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

"**Market Withdrawal**" means a Person's Removal or Correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

"**Material Adverse Effect**" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the condition (financial or otherwise), operations, business, or properties of the Credit Parties taken as a whole, (b) the rights and remedies of Agent, Term Loan Servicer, or Lenders under any Financing Document, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (c) the legality, validity or enforceability of any Financing Document, (d) the existence, perfection or priority of any security interest granted to the Agent or the Lenders in any Financing Document, except solely as a result of any action or inaction of Agent or any Lender (provided that such action or inaction is not caused by a Credit Party's failure to comply with the terms of the Financing Documents) (e) the value of any material Collateral, or (f) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Material Contracts**" means (a) the agreements listed on Schedule 3.17, and (b) any other agreement or contract to which such Credit Party or its Subsidiaries is a party the termination of which could reasonably be expected to result in a Material Adverse Effect.

"**Material Intangible Assets**" means all of (a) Intellectual Property owned by the Credit Parties or their Subsidiaries and (b) license or sublicense agreements or other agreements with respect to rights in Intellectual Property not owned by a Credit Party or a Subsidiary thereof, in each case, that are material to the condition (financial or otherwise), business or operations of the Credit Parties and their Subsidiaries (taken as a whole).

"**Maturity Date**" means November 1, 2027.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Funding IV Trust, a Delaware statutory trust, and its successors and assigns.

"**Minimum Balance**" means, at any time, an amount that equals the product of: (a) the average Borrowing Base (or, if less on any given day, the Revolving Loan Commitment) during the immediately preceding month *multiplied by* (b) the Minimum Balance Percentage for such month.

"**Minimum Balance Fee**" means a fee equal to (a) the positive difference, if any, remaining after subtracting (i) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month (without giving effect to the clearance day calculations referenced above or in Section 2.2(a)) from (ii) the Minimum Balance *multiplied by* (b) the average interest rate applicable to the Revolving Loans during such month.

"**Minimum Balance Percentage**" means fifteen percent (15.0%).

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Credit Party or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"**Net Revenue**" means, for any period, the net revenue of Credit Parties and their Consolidated Subsidiaries for such period, as determined in accordance with GAAP.

"**Non-Funding Lender**" has the meaning set forth in Section 11.18.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

"**OFAC**" means the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"Orderly Liquidation Value" means the net amount (after all costs of sale), expressed in terms of money, which Agent, in its Permitted Discretion, estimates can be realized from a sale, as of a specific date, given a reasonable period to find a purchaser(s), with the seller being compelled to sell on an as-is/where-is basis, as reflected in the most recent appraisal delivered hereunder.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party or any Subsidiary, the ordinary course of business of such Credit Party or Subsidiary, as conducted by such Credit Party or Subsidiary in accordance with past practices and undertaken by such Person in good faith and not for purposes of evading any covenant or restriction in any Financing Document.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, articles of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating agreement, joint venture agreement, limited liability company agreement or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other Equity Interests of such Person.

"**Other Connection Taxes**" means taxes imposed as a result of a present or former connection between Agent, Term Loan Servicer or any Lender and the jurisdiction imposing such tax (other than connections arising from Agent, Term Loan Servicer or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loans or any Financing Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document, except any such taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(i)).

"**Participant**" has the meaning set forth in Section 11.17.

"**Participant Register**" has the meaning set forth in Section 11.17(a)(iii).

"**Payment Account**" means, as applicable, the Term Loan Payment Account or the Revolving Loan Payment Account.

"**Payment Recipient**" has the meaning specified therefor in Section 13.20 of this Agreement.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Perfection Certificate**" means the Perfection Certificate delivered to Agent as of the Closing Date, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement.

"**Permit**" means all licenses, certificates, accreditations, product clearances or approvals, supplier numbers, marketing authorizations, device authorizations and approvals, other authorizations, franchises, qualifications, accreditations, registrations, permits, consents and approvals of a Credit Party issued or required under Laws applicable to the business of the Credit Parties or any of their Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of the Credit Parties or any of their Subsidiaries. Without limiting the generality of the foregoing, "**Permit**" includes any Regulatory Required Permit.

"**Permitted Asset Dispositions**" means the following Asset Dispositions:

(a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale;

(b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the applicable Credit Party or Subsidiary determines in good faith is no longer used or useful in the business of such Credit Party and its Subsidiaries and with a fair salable value not to exceed Five Hundred Thousand Dollars ($500,000) in the aggregate for all such furniture, fixtures and equipment in any calendar year;

(c) expiration, forfeiture, invalidation, cancellation, abandonment or lapse (including, without limitation, the narrowing of claims) of Intellectual Property (other than Material Intangible Assets) that is, in the reasonable good faith judgment of a Credit Party, no longer useful in the conduct of the business of the Credit Parties or any of their Subsidiaries;

(d) Permitted Licenses;

(e) the use of cash and Cash Equivalents to make Permitted Investments and otherwise in the Ordinary Course of Business;

(f) (i) Asset Dispositions from a Credit Party to any other Credit Party, (ii) Asset Dispositions from any Restricted Foreign Subsidiaries to any Credit Party, (iii) Asset Dispositions from any Restricted Foreign Subsidiary to another Restricted Foreign Subsidiary;

(g) sales, forgiveness or discounting, on a non-recourse basis and in the Ordinary Course of Business, of past due Accounts (other than Eligible Accounts included in the Borrowing Base) in connection with the settlement of delinquent Accounts or in connection with the bankruptcy or reorganization of suppliers or customers in accordance with the applicable terms of this Agreement;

(h) to the extent constituting an Asset Disposition, the granting of Permitted Liens;

(i) Asset Dispositions to customers of Equipment located at a customer's site for research and collaboration;

(j) (i) any termination of any lease, sublease, license or sub-license (other than any licenses constituting Material Contracts or Material Intangible Assets) in the Ordinary Course of Business (and any related Asset Disposition of improvements made to leased real property resulting therefrom), (ii) any expiration of any option agreement in respect of real or personal property, and (iii) any surrender or waiver of contractual rights or the settlement, release or surrender of contractual rights or litigation claims (including in tort) in the Ordinary Course of Business;

(k) any sale of motor vehicles and information technology equipment purchased at the end of an operating lease and resold thereafter; and

(l) dispositions of tangible personal property (and not, for the avoidance of doubt, any Intellectual Property or other General Intangibles) so long as (i) the assets subject to such Asset Dispositions are sold for fair value, as determined by the Borrowers in good faith, (ii) at least 75% of the consideration therefor is cash or Cash Equivalents, (iii) the aggregate amount of such Asset Dispositions in any twelve (12) month period does not exceed $3,000,000, and (iv) no Event of Default has occurred and is continuing or would result from the making of such disposition.

"**Permitted Contest**" means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Credit Party or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided*, *however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Credit Parties' and their Subsidiaries' title to, and its right to use, the Collateral is not adversely affected thereby and Agent's Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Credit Parties or their Subsidiaries; and (d) upon a final determination of such contest, Credit Parties and their Subsidiaries shall promptly comply with the requirements thereof.

"**Permitted Contingent Obligations**" means

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the Closing Date and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than a Permitted Refinancing);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed Five Hundred Thousand Dollars ($500,000) in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6 or in connection with any other commercial agreement entered into by a Credit Party or a Subsidiary thereof in the Ordinary Course of Business;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by a Credit Party or a Subsidiary in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(h) Contingent Obligations existing or arising in connection with any letter of credit for the primary purpose of securing a lease of real property in the Ordinary Course of Business, *provided* that the aggregate amount of all such letter of credit reimbursement obligations does not at any time exceed Four Million Dollars ($4,000,000) outstanding;

(i) Contingent Obligations arising under guarantees by a Credit Party of Debt or other obligations, which Debt or other obligations are otherwise permitted hereunder; provided, however, that if such obligation is subordinated to the Obligations, such guarantee shall be subordinated to the same extent; and

(j) other Contingent Obligations not permitted by clauses (a) through (i) above, not to exceed Three Million Dollars ($3,000,000) in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Credit Parties Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) purchase money Debt and Capital Leases not to exceed $3,000,000 in the aggregate at any time (whether in the form of a loan or a lease) used solely to acquire Equipment used in the Ordinary Course of Business and secured only by such Equipment and any Permitted Refinancing thereof;

(d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than any Permitted Refinancing thereof);

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, provided, however, that such obligations are (or were) entered into by Borrower or a Subsidiary in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt owed to any Person providing property, casualty, liability, or other insurance to the Credit Parties, including to finance insurance premiums, so long as the amount of such Debt is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the policy year in which such Debt is incurred and such Debt is outstanding only during such policy year;

(g) Debt consisting of unsecured intercompany loans and advances incurred by (1) any Credit Party owing to any other Credit Party, (2) any Credit Party owing to any Restricted Foreign Subsidiary, (3) any Restricted Foreign Subsidiary owing to any other Restricted Foreign Subsidiary, or (4) any Restricted Foreign Subsidiary owing to any Credit Party so long as such Debt constitutes a Permitted Investment of the applicable Credit Party pursuant to clause (i) of the definition of Permitted Investments and, in each case; *provided* that any such Debt owed by a Credit Party shall, at the request of Agent, be subordinated to the payment in full of the Obligations pursuant to documentation in form and substance reasonably satisfactory to Agent;

(h) Subordinated Debt;

(i) to the extent also constituting Debt (without duplication), Permitted Contingent Obligations;

(j) Debt in respect of netting services, overdraft protections and other like services, in each case incurred in the Ordinary Course of Business;

(k) Debt, in an aggregate amount not to exceed $1,600,000 at any time outstanding, in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management or merchant services, in each case, incurred in the Ordinary Course of Business; *provided* that, to the extent such Debt is secured, it is secured solely by cash collateral held in a Credit Card Cash Collateral Account; and

(l) other unsecured Debt not to exceed $3,000,000 in the aggregate at any time at any time outstanding.

"**Permitted Discretion**" mean a determination made by Agent in good faith and in the exercise of reasonable business judgment.

"**Permitted Distributions**" means the following Distributions:

(a) Distributions by any Subsidiary of a Credit Party to a Credit Party;

(b) dividends payable solely in common Equity Interests (other than Disqualified Equity Interests) so long as such dividends do not result in a Change in Control;

(c) repurchases of stock of current or former employees, directors or consultants pursuant to stock purchase agreements so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase;

(d) distributions of Equity Interests (other than Disqualified Equity Interests) upon the conversion or exchange of Equity Interests (including options and warrants) or Subordinated Debt (and payments in respect of fractional shares);

(e) cash payments in lieu of the issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for capital stock, or in connection with dividends, share splits, reverse share splits (or any combination thereof) and other Investments permitted hereunder, in an aggregate maximum amount not to exceed One Hundred Thousand Dollars ($100,000.00) in any fiscal year; and

(f) cash dividends approved by Borrower's board of directors, in an aggregate maximum amount not to exceed One Million Dollars ($1,000,000.00) in any fiscal year so long as immediately prior to and after giving effect to any such dividend or distribution pursuant to this clause (f), (i) no Event of Default has occurred and is continuing, or would result immediately after giving effect to such dividend, and (ii) Borrower has Credit Party Unrestricted Cash in an aggregate amount equal to or greater than One Hundred Million Dollars ($100,000,000).

"**Permitted Investments**" means:

(a) Investments shown on Schedule 5.7 and existing on the Closing Date;

(b) to the extent constituting an Investment, the holding by a Person of cash and Cash Equivalents owned by such Person;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved

by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans and advances outstanding pursuant to this clause (d) may not exceed $250,000 at any time;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided*, *however*, that this clause (f) shall not apply to Investments of any Credit Party in any Subsidiary;

(g) Investments consisting of Deposit Accounts or Securities Accounts in which Agent has received a Deposit Account Control Agreement or Securities Account Control Agreement, except in the case of Excluded Accounts;

(h) Investments by (1) any Credit Party in any other Credit Party, (2) any Restricted Foreign Subsidiary in any other Restricted Foreign Subsidiary; and (3) any Restricted Foreign Subsidiary in any Borrower or Guarantor; provided that all obligations of the Credit Parties in connection with any Investment by a Restricted Foreign Subsidiary in any Credit Party (other than in the form of Equity Interests not constituting Disqualified Equity Interests) shall be subordinated to the Obligations pursuant to a Subordination Agreement;

(i) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, Investments of cash and Cash Equivalents by Credit Parties in a Restricted Foreign Subsidiary but solely to the extent that (x) the aggregate amount of such Investments (including payments in respect of intercompany Debt) made with respect to all Restricted Foreign Subsidiaries does not, at any time, exceed $1,000,000 at any time outstanding, and (y) with respect to any individual Restricted Foreign Subsidiary, the amount of such Investments in such Restricted Foreign Subsidiary at any time outstanding does not exceed the amount necessary to fund the current monthly operating expenses of such Restricted Foreign Subsidiary (taking into account their revenue from other sources; *provided* that in no event shall any Investment be made pursuant to this clause (i) unless Credit Parties are in compliance with Section 5.19(a) before and after giving effect to such Investment;

(j) [Reserved];

(k) to the extent constituting Investments, intercompany receivables that arise solely from customary and reasonable transfer pricing and cost sharing arrangements (i.e., "cost plus" arrangements) and associated "true-up" payments among the Credit Parties or the Restricted Foreign Subsidiaries, in each case, that are in the Ordinary Course of Business and only to the extent such arrangements are entered into in order to accurately reflect the costs of operating the business of the Restricted Foreign Subsidiaries, as applicable, and/or to maintain compliance with all applicable jurisdictional Tax requirements;

(l) the granting of Permitted Licenses;

(m) Investments in prepaid expenses, utility and workers' compensation, performance and other similar deposits, each as entered into in the Ordinary Course of Business; and

(n) so long as no Event of Default exists at the time of such Investment or after giving effect to such Investment, other Investments of cash and Cash Equivalents in an amount not exceeding Three Million Dollars ($3,000,000) in the aggregate at any time outstanding.

"**Permitted License**" means any non-exclusive license or sublicense of discrete Intellectual Property rights of Credit Parties or their Subsidiaries so long as all such licenses or sublicenses (i) are granted to third parties in the Ordinary Course of Business, (ii) do not result in a legal transfer of title to the licensed property, (iii) have been granted in exchange for fair consideration on commercially reasonable terms, and (iv) no Event of Default has occurred and is continuing or would result from the granting of such license or sublicense.

"**Permitted Liens**" means:

(a) deposits or pledges of cash arising in the Ordinary Course of Business to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Credit Party's or its Subsidiary's employees, if any;

(b) deposits or pledges of cash and Cash Equivalents in the Ordinary Course of Business to secure, without duplication, (i) leases and other obligations of like nature arising in the Ordinary Course of Business and (ii) Permitted Contingent Obligations described in clause (h) of the definition thereof;

(c) carrier's, warehousemen's, mechanic's, workmen's, landlord's materialmen's or other like Liens on Collateral arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(d) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest;

(e) attachments, stay or appeal bonds, judgments and other similar Liens arising in connection with court proceedings that do not constitute an Event of Default; *provided, however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(f) Liens with respect to real estate, easements, rights of way, restrictions, minor defects or irregularities of title, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Documents, materially affect the value or marketability of the Collateral, impair the use or operation of the Collateral for the use currently being made thereof or impair Credit Parties' ability to pay the Obligations in a timely manner or impair the use of the Collateral or the ordinary conduct of the business of any Credit Party or any Subsidiary and which, in the case of any real estate that is part of the Collateral, are set forth as exceptions to or subordinate matters in the title insurance policy accepted by Agent insuring the lien of the Security Documents;

(g) Liens and encumbrances in favor of Agent under the Financing Documents;

(h) Liens, other than on Collateral that is part of the Borrowing Base, existing on the date hereof and set forth on Schedule 5.2 on the Closing Date and Liens granted in a Permitted Refinancing of the obligations or liabilities secured by such Liens;

(i) any Lien on any Equipment and the proceeds thereof securing Debt permitted under clause (c) of the definition of Permitted Debt; *provided, however*, that such Lien attaches

concurrently with or within twenty (20) days after the acquisition thereof and Liens incurred in a Permitted Refinancing of such Debt secured by such Liens;

(j) to the extent constituting a Lien, the granting of a Permitted License;

(k) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases or consignments of personal property entered into the Ordinary Course of Business;

(l) Liens granted in the Ordinary Course of Business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted clause (f) of the definition of Permitted Debt;

(m) Liens that are rights of set-off, bankers' liens or similar non-consensual Liens relating to Deposit Accounts or Securities Accounts in favor of banks, other depositary institutions and securities intermediaries solely to secure payment of fees and similar costs and expenses and arising in the Ordinary Course of Business

(n) Leases or subleases of real property granted in the Ordinary Course of Business;

(o) Liens, deposits and pledges encumbering cash and Cash Equivalents with a value not to exceed Five Hundred Thousand Dollars ($500,000) in the aggregate at any time, to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), public or statutory obligations, surety, indemnity, performance or other similar bonds or other similar obligations arising in the Ordinary Course of Business;

(p) Liens solely in respect of the Credit Card Cash Collateral Accounts and amounts deposited therein to the extent securing obligations permitted pursuant to clause (k) of the definition of Permitted Debt;

(q) Liens solely in respect of the L/C Cash Collateral Accounts and amounts deposited therein to the extent securing obligations permitted pursuant to clause (h) of the definition of Permitted Contingent Obligations; and

(r) Liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods in the Ordinary Course of Business.

"**Permitted Modifications**" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of Agent or Lenders and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective.

"**Permitted Refinancing**" means Debt constituting a refinancing, extension or renewal of Debt; provided that the refinanced, extended, or renewed Debt (a) has an aggregate outstanding principal amount not greater than the aggregate principal amount of the Debt being refinanced or extended (plus any reasonable and customary interest, fees, premiums and costs and expenses) (b) has a weighted average maturity (measured as of the date of such refinancing or extension) and maturity no shorter than that of the Debt being refinanced or extended, (c) is not entered into as part of a sale leaseback transaction, (d) is not secured by a Lien on any assets other than the collateral securing the Debt being refinanced or extended, (e) the obligors of which are the same as the obligors of the Debt being refinanced or extended, (f) is otherwise on terms no less favorable to Credit Parties and their Subsidiaries,

taken as a whole, than those of the Debt being refinanced or extended, and (g) no Event of Default has occurred and is continuing at the time such refinancing, extension or renewal occurs or would result therefrom.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Pledge Agreement**" means that certain Pledge Agreement, dated as of the date hereof, executed by Viewray and certain other Credit Parties in favor of Agent, for the benefit of Lenders, covering all the Equity Interests respectively owned by the Credit Parties, as amended, restated, or otherwise modified from time to time.

"**Prepayment Fee**" has the meaning set forth in Section 2.2(h).

"**Prime Rate**" means the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; *provided* that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and *provided* further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Agent, the "Prime Rate" shall mean the rate of interest per annum announced by Agent as the SVB prime rate in effect at SVB's principal office in the State of California (such SVB announced Prime Rate not being intended to be the lowest rate of interest charged by SVB in connection with extensions of credit to debtors).

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make advances in respect of a Term Loan Tranche 1 and such Lender's right to receive payments of principal, interest and fees with respect to the Term Loan Tranche 1, the Term Loan Tranche 1 Commitment Percentage of such Lender; *provided* that if the Term Loan Tranche 1 Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's portion of the Term Loan Tranche 1 and the denominator shall be the aggregate unpaid principal amount of the Term Loan Tranche 1, (b) with respect to a Lender's obligation to make advances in respect of a Term Loan Tranche 2 and such Lender's right to receive payments of principal, interest and fees with respect to the Term Loan Tranche 2, the Term Loan Tranche 2 Commitment Percentage of such Lender; *provided* that if the Term Loan Tranche 2 Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's portion of the Term Loan Tranche 2 and the denominator shall be the aggregate unpaid principal amount of the Term Loan Tranche 2, (c) with respect to a Lender's obligation to make Revolving Loans, and such Lender's right to receive any fee payable to or for the benefit of the Revolving Lenders, the Revolving Loan Commitment Percentage of such Lender, (d) with respect to a Lender's right to receive payments of principal and interest with respect to Revolving Loans, such Lender's Revolving Loan Exposure with respect thereto, and (e) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the sum of the Revolving Loan Commitment Amount (or, in the event the Revolving Loan Commitment shall have been reduced to zero, such Lender's then existing Revolving Loan Outstandings), the then remaining Term Loan Commitment Amount, and the then outstanding principal advances under the Term Loan of such Lender, *by* (ii) the sum of the Revolving Loan Commitment (or, in the event the Revolving Loan Commitment shall have been reduced to zero, the then existing Revolving Loan Outstandings), the then remaining Term Loan Commitment, and the then outstanding principal advances under the Term Loans of all Lenders.

"**Proceeding**" means any suit, formal charge, complaint, action or hearing, whether judicial or administrative, before any Governmental Authority or arbitrator.

"**Proceeds**" means "proceeds" (as defined in Article 9 of the UCC).

"**Products**" means, from time to time, any products currently manufactured, sold, developed, tested, marketed or acquired by any Credit Party or any of its Subsidiaries.

"**Protective Advance**" means all sums expended by Agent in accordance with the provisions of Section 10.4 to (a) protect the priority, validity and enforceability of any lien on, and security interests in, any Collateral and the instruments evidencing and securing the Obligations, (b) prevent the value of any Collateral from being diminished, or (c) protect any of the Collateral from being materially damaged, impaired, mismanaged or taken.

"**Recall**" means a Person's Removal or Correction of a marketed product that the FDA considers to be in violation of the laws it administers and against which the FDA would initiate legal action, e.g., seizure.

"**Register**" has the meaning set forth in Section 11.17(a)(iii).

"**Registered Intellectual Property**" means any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing.

"**Regulatory Reporting Event**" has the meaning set forth in Section 4.1.

"**Regulatory Required Permit**" means any and all licenses, approvals and permits issued by the FDA, Nuclear Regulatory Commission, or any other applicable Governmental Authority, necessary for (a) the testing, manufacture, marketing or sale of any Product by any applicable Credit Party or its Subsidiaries as such activities are being conducted by such Credit Party and its Subsidiaries with respect to such Product at such time, and those issued by State governments or foreign governments for the conduct of any Credit Party's or any Subsidiary's business or (b) the operation by any applicable Credit Party or its subsidiaries of any manufacturing facility or other similar operation.

"**Removal**" means the physical removal of a Product from its point of use to some other location for repair, modification, adjustment, relabeling, destruction, or inspection.

"**Replacement Lender**" has the meaning set forth in Section 11.17(c).

"**Required Lenders**" means at any time Lenders holding (a) of more than fifty percent (50%) the sum of the Revolving Loan Commitments, the remaining Term Loan Commitments, and the then outstanding principal advances under the Term Loans (taken as a whole) or (b) if the Revolving Loan Commitments has been reduced to zero, more than fifty percent (50%) of the sum of the then aggregate outstanding principal balance of the Revolving Loans, the remaining Term Loan Commitments, and the then outstanding principal advances under the Term Loans (taken as a whole); *provided*, *however*, that, solely with respect to MidCap Financial Trust and Silicon Valley Bank, so long as such Lender does not assign any portion of its Revolving Loan Commitment or Revolving Loans or Term Loan Commitment or Term Loans to any Person other than an Affiliate or an Approved Fund of such Lender, the term "Required Lenders" shall include such Lender (and any Affiliate to which it assigns its interests). For purposes of this definition only, a Lender shall be deemed to include itself, and any Lender that is an Affiliate or Approved Fund of such Lender.

"**Resolution Authority**" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"**Responsible Officer**" means any of the President, Chief Executive Officer, Chief Financial Officer, Chief Legal Officer, Deputy General Counsel, Corporate Secretary or Assistant Corporate Secretary or any other officer of the applicable Credit Party acceptable to Agent.

"**Restricted Foreign Subsidiary**" means (a) ViewRay GmbH, (b) each other direct and indirect Subsidiary of Viewray formed or acquired after the Closing Date and not organized under the laws of the United States, Washington, D.C. or any state thereof and (c) each U.S. Holdco; *provided* that no foreign

Subsidiary or U.S. Holdco that becomes a Credit Party pursuant to Section 4.11(e) shall be a "Restricted Foreign Subsidiary" for purposes of this Agreement or the other Financing Documents.

"**Revolving Lender**" means each Lender having a Revolving Loan Commitment Amount in excess of Zero Dollars ($0) (or, in the event the Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having Revolving Loan Outstandings in excess of Zero Dollars ($0)).

"**Revolving Loan Account**" has the meaning set forth in Section 2.6(b).

"**Revolving Loan Availability**" means, at any time, the Revolving Loan Limit minus the Revolving Loan Outstandings.

"**Revolving Loan Commitment**" means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date.

"**Revolving Loan Commitment Amount**" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Revolving Loan Commitment Amount for such Lender shall be deemed to be Zero Dollars ($0)), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of Revolving Loans outstanding and its commitment to make Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party and (b) any Additional Tranche(s) activated by Borrowers. For the avoidance of doubt, the aggregate Revolving Loan Commitment Amount of all Lenders on the Closing Date shall be $15,000,000 and if the Additional Tranche is fully activated by Borrowers pursuant to the terms of the Agreement such amount shall increase to $25,000,000.

"**Revolving Loan Commitment Percentage**" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Revolving Loan Commitment Amount of such Lender on such date *divided by* the Revolving Loan Commitment on such date.

"**Revolving Loan Exposure**" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's Revolving Loan Outstandings on such date *divided by* the aggregate Revolving Loan Outstandings of all Lenders on such date.

"**Revolving Loan Limit**" means, at any time, the lesser of (a) the Revolving Loan Commitment and (b) the Borrowing Base.

"**Revolving Loan Outstandings**" means, at any time of calculation, without duplication (a) the then existing aggregate outstanding principal amount of Revolving Loans, and (b) when used with reference to any single Lender, the then existing outstanding principal amount of Revolving Loans advanced by such Lender.

"**Revolving Loan Payment Account**" means the account specified on the Agent's signature page hereto as the Revolving Loan Payment Account, into which all payments by or on behalf of each Borrower to Agent (other than payments of principal, interest, fees, expenses, charges and all other amounts owing solely in respect of the Term Loans) under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**Revolving Loans**" has the meaning set forth in Section 2.1(b).

"Sanctioned Country" means any country or territory that is itself subject to comprehensive sanctions maintained by OFAC including at the time of this Agreement, Cuba, Iran, North Korea, Syria and the Crimea, Donetsk People's Republic and Luhansk People's Republic regions.

"**SEC**" means the United States Securities and Exchange Commission.

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Credit Party.

"**Securities Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Credit Party and each securities intermediary in which such Credit Party maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement, the Pledge Agreement, the Intellectual Property Security Agreement (at all times after such agreement becomes effective in accordance with the terms of this Agreement), and each other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Springing IP Lien Event**" means that, on any date, the Credit Parties have allowed, as of the close of business on such date, the aggregate Credit Party Unrestricted Cash to be less than an amount equal to the greater of (a) $50,000,000, and (b) an amount equal to 110% of the combined aggregate outstanding principal balance of the Term Loans and the Revolving Loans as of such date.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its debts and liabilities (including subordinated and Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means any Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent. As of the Closing Date, there is no Subordinated Debt.

"**Subordinated Debt Documents**" means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there are no Subordinated Debt Documents.

"**Subordination Agreement**" means each agreement between Agent and another creditor of Credit Parties, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Credit Party and/or the Liens securing such Debt granted by any Credit Party to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation (or any foreign equivalent thereof) of which an aggregate of fifty percent (50%) or more of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such Equity Interests whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company (or any foreign equivalent thereof) in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Credit Party.

"**SVB**" means Silicon Valley Bank.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by a Credit Party to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Lender**" means a Lender with a Term Loan Commitment or a portion of the outstanding Term Loans.

"**Term Loan**" means, collectively, the Term Loan Tranche 1 and the Term Loan Tranche 2.

"**Term Loan Account**" has the meaning set forth in Section 2.6(c).

"**Term Loan Commitment Amount**" means, with respect to each Lender, the sum of such Lender's Term Loan Tranche 1 Commitment Amount and Term Loan Tranche 2 Commitment Amount.

"**Term Loan Commitment Percentage**" means, as to any Lender with respect to each of such Lender's Term Loan Commitments, (a) on the Closing Date, with respect to each tranche of the Term Loan, the applicable percentage set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Tranche 1 Commitment Percentage", and "Term Loan Tranche 2 Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, as applicable to each tranche of Term Loan, the percentage equal to (i) the Term Loan Tranche 1 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 1 Commitments on such date, or (ii) the Term Loan Tranche 2 Commitment of such Lender on such date *divided by* the aggregate Term Loan Tranche 2 Commitments on such date.

"**Term Loan Commitments**" means the Term Loan Tranche 1 Commitments, and the Term Loan Tranche 2 Commitments. For the avoidance of doubt, the aggregate Term Loan Commitments of all Lenders on the Closing Date shall be $100,000,000.

"**Term Loan Payment Account**" means the account specified on the Term Loan Servicer's signature page hereto as the Term Loan Payment Account, into which all payments by or on behalf of each Borrower to Agent of principal, interest, fees, expenses, charges and all other amounts owing solely in respect of the Term Loans under the Financing Documents shall be made, or such other account as Term Loan Servicer shall from time to time specify by notice to Borrower Representative.

"**Term Loan Servicer**" MidCap Financial Trust, in its capacity as Term Loan Servicer for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MidCap Financial Trust in such capacity.

"**Term Loan Tranche 1**" has the meaning set forth in Section 2.1(a)(i)(A).

"**Term Loan Tranche 1 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 1 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 1 Commitments**" means the sum of each Lender's Term Loan Tranche 1 Commitment Amount.

"**Term Loan Tranche 2**" has the meaning set forth in Section 2.1(a)(i)(B).

"**Term Loan Tranche 2 Activation Date**" means the later of (a) the date on which Viewray files its Form 10-K for the fiscal year ending December 31, 2023 with the SEC and (b) February 29, 2024.

"**Term Loan Tranche 2 Commitment Amount**" means, with respect to each Lender, the amount set forth opposite such Lender's name on Annex A hereto under the caption "Term Loan Tranche 2 Commitment Amount", as amended from time to time to reflect any permitted and effective assignments and as such amount may be reduced or terminated pursuant to this Agreement.

"**Term Loan Tranche 2 Commitment Termination Date**" means the earlier of (a) June 30, 2024 and (b) the date on which Agent (at the direction of the Required Lenders) provides notice to the Credit Parties, following the occurrence of an Event of Default (which has not been waived or cured as of the date such notice is given), that the Term Loan Tranche 2 Commitments have been terminated.

"**Term Loan Tranche 2 Commitments**" means the sum of each Lender's Term Loan Tranche 2 Commitment Amount.

"**Termination Date**" means the earliest to occur of (a) the Maturity Date, (b) any date on which the maturity of the Loans is accelerated pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"**U.S. Holdco**" means any domestic Subsidiary of a Borrower, the sole assets (other than immaterial assets) of which consist of Equity Interests of CFCs.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 2.8(c)(i).

"**UCC**" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**UK Financial Institution**" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"**UK Resolution Authority**" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"**United States**" means the United States of America.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 2.8(c)(i).

"**Withholding Agent**" means any Borrower, Agent or Term Loan Servicer, as applicable.

"**Work-In-Process**" means Inventory that is not a product that is finished and approved by a Borrower in accordance with applicable Laws and such Borrower's normal business practices for release and delivery to customers.

"**Write-Down and Conversion Powers**" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Credit Party and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided*, *however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Any obligations of a Person under a lease (whether existing now or entered into in the future) that is not (or would not be) a capital lease obligation under GAAP as in effect prior to giving effect to FASB Accounting Standards Update No. 2016-02, Leases, shall not be treated as a capital lease obligation solely as a result of the adoption of changes in GAAP, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable. All references herein to a merger, transfer, consolidation, amalgamation, assignment, sale or transfer, or analogous term, will be construed to mean also a division of or by a limited liability company, as if it were a merger, transfer, consolidation, amalgamation,

assignment, sale or transfer, or similar term, as applicable. Any series of limited liability company shall be considered a separate Person.

Section 1.4 Settlement and Funding Mechanics. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds.

Section 1.5 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

Section 1.6 Time of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight savings or standard, as applicable).

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Term Loans.

(i) Term Loan Amounts.

(A) On the terms and subject to the conditions set forth herein and in the other Financing Documents, each Lender with a Term Loan Tranche 1 Commitment Amount severally hereby agrees to make to Borrowers a Term Loan on the Closing Date in an original aggregate principal amount equal to the Term Loan Tranche 1 Commitments (the "**Term Loan Tranche 1**"). Each such Lender's obligation to fund the Term Loan Tranche 1 shall be limited to such Lender's Term Loan Tranche 1 Commitment Percentage, and no Lender shall have any obligation to fund any portion of any Term Loan required to be funded by any other Lender, but not so funded.

(B) On the terms and subject to the conditions set forth herein and in the other Financing Documents, each Lender with a Term Loan Tranche 2 Commitment Amount severally hereby agrees to make to Borrowers a Term Loan on a Business Day occurring on or after the Term Loan Tranche 2 Activation Date and on or prior to the Term Loan Tranche 2 Commitment Termination Date in an original aggregate principal amount equal to the Term Loan Tranche 2 Commitment (the "**Term Loan Tranche 2**"). Each such Lender's obligation to fund the Term Loan Tranche 2 shall be limited to such Lender's Term Loan Tranche 2 Commitment Amount, and no Lender shall have any obligation to fund any portion of any Term Loan required to be funded by any other Lender, but not so funded. Unless previously terminated, upon the Term Loan Tranche 2 Commitment Termination Date, the Term Loan Tranche 2 Commitment shall thereupon automatically be terminated and the Term Loan Tranche 2 Commitment Amount of each Lender as of such date shall be reduced by such Lender's Pro Rata Share of such total reduction in the Term Loan Commitments.

(C) No Borrower shall have any right to reborrow any portion of the Term Loan that is repaid or prepaid from time to time. Borrowers shall deliver to Agent and Term Loan Servicer a Notice of Borrowing with respect to each proposed Term Loan advance, such Notice of Borrowing to be delivered, (i) in the case of a Term Loan Tranche 1 borrowing, no later than 12:00 P.M. (Eastern time) on the Closing Date and (ii) in the case of a Term Loan Tranche 2 borrowing, no later than 12:00 P.M. (Eastern time) fifteen (15) Business Days (or such shorter period as may be agreed by Agent, Term Loan Servicer and the Lenders) prior to such proposed borrowing.

(ii) Scheduled Repayments; Mandatory Prepayments; Optional Prepayments.

(A) There shall become due and payable, and the Borrowers shall repay each Term Loan through, scheduled principal payments as set forth on Schedule 2.1 attached hereto. Notwithstanding the payment schedule set forth above, the outstanding principal amount of each Term Loan shall become immediately due and payable in full on the Termination Date.

(B) There shall become due and payable and Borrowers shall prepay each Term Loan in the following amounts and at the following times:

(i) Subject to Borrower's option to apply casualty proceeds in accordance with this Section 2.1(a)(ii)(B)(i), within five (5) Business Days of the date on which any Credit Party (or Agent as loss payee or assignee) receives any casualty proceeds in excess of $500,000 with respect to any Collateral, an amount equal to one hundred percent (100%) of such proceeds (net of out-of-pocket expenses and repayment of secured debt permitted under clause (c) of the definition of Permitted Debt and encumbering the property that suffered such casualty), or such lesser portion of such proceeds as Agent shall elect to apply to the Term Loans and related Obligations; *provided* that, so long as no Event of Default then exists, any such casualty proceeds in excess of $500,000 may instead be used by Borrowers within three hundred and sixty (360) days from the receipt of such proceeds to replace, repair, purchase or otherwise reinvest such proceeds in assets used or useful in the business of the Credit Parties;

(ii) an amount equal to any interest that is deemed to be in excess of the Maximum Lawful Rate (as defined below) and is required to be applied to the reduction of the principal balance of the Loans by any Lender as provided for in Section 2.7; and

(iii) upon the termination of all Revolving Loan Commitments and the payment of the then existing aggregate outstanding principal amount of the Revolving Loans, the aggregate outstanding Obligations in full;

(C) Borrowers may from time to time, with at least ten (10) Business Days prior irrevocable written notice (which notice may be conditioned on the closing of a refinancing or other applicable transaction) to Agent and Term Loan Servicer, prepay the Term Loans in whole or in part; *provided*, *however*, that (x) each such prepayment (other than mandatory partial prepayments required under this Agreement) shall be in an amount equal to $5,000,000 (or a higher integral multiple of $1,000,000) (or, if less, the outstanding principal balance of the Term Loans) and (y) each such prepayment shall be made in accordance with Section 2.12, as applicable, and shall be accompanied by all prepayment fees or other fees required hereunder and any fees required under the Fee Letter or any Financing Document in connection with such prepayments.

(iii) All Prepayments. Except as this Agreement may specifically provide otherwise, all prepayments of the Term Loan shall be applied by Term Loan Servicer to the Term Loans and related Obligations in inverse order of maturity. The monthly payments required under Schedule 2.1 shall continue in the same amount (for so long as the Term Loan and/or (if applicable) any advance thereunder shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the Term Loan. Notwithstanding anything to the contrary contained in the foregoing, in the event that there have been multiple advances under the Term Loan each of which such advances has a separate amortization schedule of principal payments under Schedule 2.1 attached hereto, each prepayment of the Term Loan shall be applied by Term Loan Servicer to reduce and prepay the principal balance of the earliest-made advance

then outstanding in the inverse order of maturity of the scheduled payments with respect to such advance until such earliest-made advance is paid in full (and to the extent the total amount of any such partial prepayment shall exceed the outstanding principal balance of such earliest-made advance, the remainder of such prepayment shall be applied successively to the remaining advances under the Term Loan in the direct order of the respective advance dates in the manner provided for in this sentence).

(iv) Payments Generally. All payments by or on behalf of each Borrower to Term Loan Servicer of principal, interest, fees, expenses, charges and all other amounts owing solely in respect of the Term Loans under the Financing Documents shall be made to the Term Loan Payment Account.

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein, each Lender severally agrees to make loans to Borrowers from time to time as set forth herein (each a "**Revolving Loan**", and collectively, "**Revolving Loans**") equal to such Lender's Revolving Loan Commitment Percentage of Revolving Loans requested by Borrowers hereunder, *provided, however*, that after giving effect thereto, the Revolving Loan Outstandings shall not exceed the Revolving Loan Limit. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed borrowing of a Revolving Loan, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days prior to the date of such proposed borrowing. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion, to pay principal owing in respect of the Revolving Loans and interest, fees, expenses and other charges payable by any Credit Party in respect of the Revolving Loans from time to time arising under this Agreement or any other Financing Document (it being understood that Agent shall not be entitled to make discretionary Revolving Loans to pay any amounts due and owing under or in respect of the Term Loans). The Borrowing Base shall be determined by Agent based on the most recent Borrowing Base Certificate delivered to Agent in accordance with this Agreement and such other information as may be available to Agent. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents, the Revolving Loans shall be subject to Agent's continuing right to withhold from the Borrowing Base reserves, and to increase and decrease such reserves from time to time, if and to the extent that in Agent's Permitted Discretion, such reserves are necessary. Agent shall provide at least three (3) Business Days' prior notice to Borrower Representative of the implementation of a new reserve or the increase of a reserve if such implementation or increase of such reserve would result in the Revolving Loan Outstandings exceeding the Revolving Loan Limit; *provided, however*, that no such prior notice shall be required for the implementation of a reserve or increase of a reserve during the continuance of an Event of Default not caused by such reserve.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date; *provided, however,* that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.

(B) If at any time the Revolving Loan Outstandings exceed the Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay the Revolving Loans, in an aggregate amount equal to such excess.

(C) Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or

Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the Revolving Loans in whole or in part; *provided*, *however*, that any such partial prepayment shall be in an amount equal to $100,000 or a higher integral multiple of $25,000 (or, if less, the principal amount of Revolving Loans outstanding). For the avoidance of doubt, nothing in this clause shall permit termination of the Revolving Loan Commitment by Borrower other than in accordance with Section 2.12(b).

(iv) Payments Generally. All payments by or on behalf of each Borrower to Agent under the Financing Documents (other than those described in Section 2.1(a)(iv) above) shall be made to the Revolving Loan Payment Account.

(c) Additional Tranches. After the Closing Date, so long as no Default or Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and all Revolving Lenders in their sole discretion, the Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche requested and shall be made at least thirty (30) days prior to the proposed effective date of such Additional Tranche) to Agent to activate an Additional Tranche; *provided*, *however*, that Agent and Revolving Lenders shall have no obligation to consent to any requested activation of an Additional Tranche and the written consent of Agent and all Revolving Lenders shall be required in order to activate an Additional Tranche. Upon activating an Additional Tranche, each Lender's Revolving Loan Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the Revolving Loan Commitment as such Lender held immediately prior to such activation. In the event Agent and all Revolving Lenders do not consent to the activation of a requested Additional Tranche within thirty (30) days after receiving a written request from Borrower Representative, then the Revolving Loan Commitment shall not be increased.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest.

(i) From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the Applicable Interest Rate. Interest on the Loans shall be paid monthly in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise.

(ii) Changes to the interest rate of any Loan based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(iii) Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Revolving Loan Payment Account for application to any Revolving Loans shall be subject to a two (2) Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders.

(b) Unused Line Fee. From and following the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (1) if the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month is greater than or equal to the Minimum Balance: (i) (A) Revolving Loan Commitment Amount *minus* (B) the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month, *multiplied by* (ii) one half of one percent (0.50%) per annum or (2) if the Minimum Balance is greater than the average daily balance of

the sum of the Revolving Loan Outstandings during the preceding month: (i) (A) the Revolving Loan Commitment Amount *minus* (B) the Minimum Balance, *multiplied by* (ii) one half of one percent (0.50%) per annum. The unused line fee shall be paid monthly in arrears on the first day of each month and shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(c) Fee Letter. In addition to the other fees set forth herein, the Borrowers agree to pay Agent or Term Loan Servicer, as applicable, the fees set forth in the Fee Letter.

(d) Minimum Balance Fee. On the first day of each month, the Borrowers agree to pay to Agent, for the ratable benefit of all Revolving Lenders, the sum of the Minimum Balance Fee due for the prior month. The Minimum Balance Fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(e) [Reserved].

(f) [Reserved].

(g) [Reserved].

(h) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate or are permanently reduced for any reason (whether by voluntary termination by Borrowers, by reason of the occurrence of an Event of Default or the automatic termination of the Revolving Loan Commitments (including any automatic termination due to the occurrence of an Event of Default described in Section 10.1(f)) or otherwise) prior to the Maturity Date, Borrowers shall pay to Agent on the date of such reduction, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by *multiplying* the amount of the Revolving Loan Commitment so terminated or permanently reduced *by* the following applicable percentage amount: (w) three percent (3.00%) for the first year following the Closing Date, (x) two percent (2.00%) for the second year following the Closing Date, (y) one percent (1.00%) for the third year following the Closing Date, and (z) zero percent (0.00%) thereafter. All fees payable pursuant to this paragraph shall be deemed fully-earned on of the Closing Date and non-refundable once paid.

(i) Prepayment Fee. If any advance under the Term Loan is prepaid at any time, in whole or in part, for any reason (whether by voluntary prepayment by Borrower, by mandatory prepayment by Borrower, by reason of the occurrence of an Event of Default or otherwise, or if the Term Loan shall become accelerated (including any automatic acceleration due to the occurrence of an Event of Default described in Section 10.1(f)) or otherwise) and due and payable in full, Borrowers shall pay to Term Loan Servicer, for the benefit of all Term Lenders in accordance with their Pro Rata Shares, as compensation for the costs of such Lenders making funds available to Borrowers under this Agreement, a prepayment fee (the "**Prepayment Fee**") calculated in accordance with this subsection. The Prepayment Fee in respect of the Term Loans shall be equal to an amount determined by *multiplying* the amount being prepaid (or required to be prepaid, if such amount is greater) *by* the following applicable percentage amount (x) four percent (4.00%) for the first two years following the Closing Date, (y) three percent (3.00%) for the third year following the Closing Date, and (z) two percent (2.00%) thereafter. The Prepayment Fee shall not apply to or be assessed upon any prepayment made by Borrowers if such payments were required by Agent to be made pursuant to Section 2.1(a)(ii)(B) subpart (i) (relating to casualty proceeds), or subpart (ii) (relating to payments exceeding the Maximum Lawful Rate). All fees payable pursuant to this paragraph shall be deemed fully earned as of the Closing Date and non-refundable once paid.

(j) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable and documented, out-of-pocket fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as

Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers, subject to the limitations set forth in Section 4.6 (in the case of audits and field examinations) and Section 4.14(c) (in the case of valuations or appraisals of the Collateral).

(k) Wire Fees. Borrowers shall pay to Agent or Term Loan Servicer, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's or Term Loan Servicer's, as applicable, then current wire fee schedule (available upon written request of the Borrowers).

(l) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to two percent (2.0%) of each delinquent payment.

(m) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(n) Automated Clearing House Payments. If Agent or Term Loan Servicer (or their respective designated servicers or trustees on behalf of a securitization vehicle) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent or Term Loan Servicer hereunder shall be paid to Agent or Term Loan Servicer, as applicable, by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such Lender's Revolving Loan Commitment Amount or Term Loan Commitments.

Section 2.4 Reserved.

Section 2.5 Reserved.

Section 2.6 General Provisions Regarding Payment; Loan Accounts.

(a) All payments to be made by each Credit Party under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in a Payment Account before

12:00 Noon (Eastern time) on any date shall be deemed received by Agent or Term Loan Servicer, as applicable, on such date, and any payments received in the applicable Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent or Term Loan Servicer, as applicable, on the next succeeding Business Day.

(b) Agent shall maintain a revolving loan account (the "**Revolving Loan Account**") on its books to record Revolving Loans and other extensions of credit made by the Revolving Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Revolving Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Revolving Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Revolving Loan Account (but none of Agent or any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

(c) Term Loan Servicer shall maintain a term loan account (the "**Term Loan Account**") on its books to record Term Loans and other extensions of credit made by the Term Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Term Loan Account shall be made in accordance with Term Loan Servicer's customary accounting practices as in effect from time to time. The balance in the Term Loan Account, as recorded in Term Loan Servicer's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Term Loan Servicer by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Term Loan Servicer shall endeavor to provide Borrowers with a monthly statement regarding the Term Loan Account (but none of Term Loan Servicer or any Lender shall have any liability if Term Loan Servicer shall fail to provide any such statement). Unless any Borrower notifies Term Loan Servicer of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing Document (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided*, *however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, each Borrower shall, to the extent permitted by law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrowers. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such

interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

Section 2.8 Taxes; Capital Adequacy.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any present or future Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and if any such withholding or deduction is in respect of an Indemnified Tax, then the Credit Parties shall pay such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent, Term Loan Servicer and each Lender will equal the full amount such recipient would have received had no such withholding or deduction been required (including, without limitation, such withholdings and deductions applicable to additional sums payable under this Section 2.8). After payment of any Tax by a Credit Party to a Governmental Authority pursuant to this Section 2.8, such Credit Party shall promptly forward to Agent and Term Loan Servicer the original or a certified copy of an official receipt, a copy of the return reporting such payment, or other documentation satisfactory to Agent and Term Loan Servicer evidencing such payment to such authority. Credit Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of Agent or Term Loan Servicer, as applicable, timely reimburse Agent or Term Loan Servicer, as applicable for the payment of, any Other Taxes.

(b) The Credit Parties shall indemnify Agent, Term Loan Servicer and Lenders, within ten (10) days after demand thereof, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.8) payable or paid by Agent, Term Loan Servicer or any Lender or required to be withheld or deducted from a payment to Agent, Term Loan Servicer or any Lender and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate in reasonable detail as to the amount of such payment or liability delivered to Borrowers by a Lender (with a copy to Agent and Term Loan Servicer), or by Agent or Term Loan Servicer, as applicable, on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(c) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Financing Document shall deliver to Borrower Representative, Agent and Term Loan Servicer, at the time or times prescribed by applicable Law or reasonably requested by Borrower Representative, Agent or Term Loan Servicer, such properly completed and executed documentation reasonably requested by Borrower Representative, Agent or Term Loan Servicer as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Representative, Agent or Term Loan Servicer, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrowers, Agent or Term Loan Servicer as will enable Borrowers, Agent or Term Loan Servicer, as applicable, to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.8(c)(i), 2.8(c)(ii) and 2.8(e) below) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Each Lender that is not a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to

such assignment) (each such Lender a "**Foreign Lender**") shall, to the extent permitted by Law, execute and deliver to Borrower Representative, Agent and Term Loan Servicer (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative, Agent or Term Loan Servicer) whichever of the following is applicable: (A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Financing Document, two (2) properly completed and executed originals of United States Internal Revenue Service ("**IRS**") Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Financing Documents, two (2) properly completed and executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form) establishing an exemption from, or reduction of, U.S. federal withholding tax pursuant to the "business profits" or "other income" article of such tax treaty; (B) two (2) executed originals of IRS Form W-8ECI (or successor form); (C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "**U.S. Tax Compliance Certificate**") and (y) two (2) executed originals of IRS Forms W-8BEN or W-8BEN-E (or successor form); (D) to the extent a Foreign Lender is not the beneficial owner, two (2) executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E (or successor form), a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9 (or successor form), and/or other certification documents from each beneficial owner, as applicable; *provided* that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner; or (E) other applicable forms, certificates or documents prescribed by the IRS. Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower Representative, Agent and Term Loan Servicer in writing of its legal inability to do so. In addition, to the extent permitted by applicable Law, such forms shall be delivered by each Foreign Lender upon the obsolescence or invalidity of any form previously delivered by such Foreign Lender. Each Foreign Lender shall promptly notify Borrower Representative at any time it determines that it is no longer in a position to provide any previously delivered certificate to Borrower Representative (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(ii) Each Lender that is a "United States person" (as such term is defined in Section 7701(a)(30) of the Code) for U.S. federal income tax purposes and is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 11.17(a) after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall, to the extent permitted by Law, provide to Borrower Representative, Agent and Term Loan Servicer on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative, Term Loan Servicer or Agent), a properly completed and executed IRS Form W-9 or any successor form certifying as to such Lender's entitlement to an exemption from U.S. backup withholding and other applicable forms, certificates or documents prescribed by the IRS or reasonably requested by Borrower Representative, Term Loan Servicer or Agent. Each such Lender shall promptly notify Borrowers at any time it determines that any certificate previously delivered to Borrower Representative (or any other form of certification adopted by the U.S. governmental authorities for such purposes) is no longer valid.

(iii) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Representative, Agent and Term Loan Servicer (in such number of copies as

shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative, Term Loan Servicer or Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrowers, Agent or Term Loan Servicer to determine the withholding or deduction required to be made.

(d) If any Lender determines, in its reasonable discretion, that it has received a refund in respect of any Taxes as to which it has been indemnified by any Borrower pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), then it shall promptly pay an amount equal to such refund to Borrowers, net of all reasonable out-of-pocket expenses of such Lender or of Agent or Term Loan Servicer with respect thereto, including any Taxes; *provided*, *however*, that Borrowers, upon the written request of such Lender, Agent or Term Loan Servicer, agree to repay any amount paid over to Borrowers to such Lender or to Agent or Term Loan Servicer (plus any related penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such Lender, Agent or Term Loan Servicer is required, for any reason, to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.8, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.8(d) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 2.8 shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) If a payment made to a Lender under any Financing Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower Representative, Agent and Term Loan Servicer at the time or times prescribed by Law and at such time or times reasonably requested by Borrower Representative, Agent or Term Loan Servicer such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower Representative, Agent or Term Loan Servicer as may be necessary for Borrowers, Agent and Term Loan Servicer to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (e), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) Each Lender shall severally indemnify Agent and Term Loan Servicer, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified Agent or Term Loan Servicer, as applicable, for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.17 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent or Term Loan Servicer in connection with any Financing Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Agent or Term Loan Servicer, as appliable, shall be conclusive absent manifest error. Each Lender hereby authorizes Agent and Term Loan Servicer to set off and apply any and all amounts at any time owing to such Lender under any Financing Document or otherwise payable by Agent or Term Loan Servicer, as applicable, to such Lender from any other source against any amount due to Agent or Term Loan Servicer, as applicable, under this paragraph (f).

(g) Each party's obligations under Section 2.8(a) through (f) shall survive the resignation or replacement of Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

(h) If any Lender shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon demand by such Lender (which demand shall be accompanied by a certificate setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent and Term Loan Servicer), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(i) If any Lender requests compensation under any of the clauses in this Section 2.8, or requires Borrowers to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8, then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 11.17) to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not otherwise be disadvantageous to such Lender (as determined in its sole good faith discretion). Without limitation of the provisions of Section 13.14, each Borrower hereby agrees to pay all reasonable and documented, out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing and Borrowing Base Certificates give instructions with respect to the disbursement of the proceeds of the Loans , giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent, Term Loan Servicer and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent or Term Loan Servicer, as applicable, may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Term Loan Servicer and the Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent and Term Loan Servicer. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent and Term Loan Servicer as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided*, *however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Term Loan Servicer, Lenders and each Borrower agree that if

the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its reasonable discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its reasonable discretion, without affecting the validity or enforceability of the Obligations of any other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) Borrowers hereby agree, as between themselves, that to the extent that Agent or Term Loan Servicer, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; *provided*, *however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided, further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full (other than inchoate indemnification obligations for which no claim has yet been made), no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of

the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations (other than inchoate indemnification obligations for which no claim has yet been made) have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations (other than inchoate indemnification obligations for which no claim has yet been made) have been indefeasibly paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent or Term Loan Servicer from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to Zero Dollars ($0) through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Collections and Lockbox Account.

(a) Borrowers shall maintain a lockbox (the "**Lockbox**") with Silicon Valley Bank or another United States depository institution reasonably acceptable to Agent (the "**Lockbox Bank**"), subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require. Borrowers shall ensure that all collections of Accounts are paid directly from Account Debtors (i) into the Lockbox for deposit into the Lockbox Account and/or (ii) directly into the Lockbox Account; *provided, however*, that unless Agent shall otherwise direct by written notice to Borrowers, Borrowers shall be permitted to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. All funds deposited into a Lockbox Account shall be transferred (x) during any Cash Dominion Period, into the Revolving Loan Payment Account by the close of each Business Day, or (y) on any Business Day not occurring during a Cash Dominion Period, into a Borrower operating deposit account at Silicon Valley Bank.

(b) **[**Reserved.**]**

(c) Notwithstanding anything in any lockbox agreement or Deposit Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox, the Lockbox Account, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and expenses, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement or similar agreement, except to the extent of such losses arising solely from Agent's gross negligence or willful misconduct.

(d) During any Cash Dominion Period, Agent shall apply, on a daily basis, all funds transferred into the Revolving Loan Payment Account pursuant to this Section 2.11 to reduce the outstanding Revolving Loans in such order of application as Agent shall elect. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Revolving Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative for so long as no Event of Default exists.

(e) To the extent that any collections of Accounts or proceeds of other Collateral are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such

collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Credit Parties.

(f) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if, at any time following the initial borrowing of Revolving Loans, any Borrower, through acts or omissions, causes or permits Account Debtors to send payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Collateral in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of the Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or other Collateral.

(h) Credit Parties shall cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If more than fifteen percent (15%) of the collections of Accounts received by Borrowers during any given fifteen (15) day period is not identified or reconciled to the reasonable satisfaction of Agent within ten (10) Business Days of receipt, Agent and Revolving Lenders shall not be obligated to make further advances under this Agreement until such amount is identified or is reconciled to the reasonable satisfaction of Agent, as the case may be. In addition, if any such amount cannot be identified or reconciled to the reasonable satisfaction of Agent, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus* expenses)), to make such examination and report as may be necessary to identify and reconcile such amount.

(i) If any Borrower breaches its obligation to direct payments of the proceeds of the Collateral to the Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for Borrowers, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Collateral to Borrowers by directing payment to the Lockbox Account.

(j) Without limiting the provisions of Section 5.14 or Borrower's obligations thereunder, and subject to Section 7.4, Borrowers shall (i) maintain all of its operating and other Deposit Accounts and Securities Accounts (other than Excluded Accounts) at Silicon Valley Bank or its Affiliates and (ii) maintain all of its primary banking services, including business credit cards, cash management and letters of credit, with Silicon Valley Bank, in each case, so long as Silicon Valley Bank remains a Lender under this Agreement.

(k) Nothing in this Section 2.11 shall be deemed to limit any of Agent or Lenders remedies following an Event of Default under this Agreement, any Deposit Account Control Agreement or any other Financing Document or under applicable Law.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement without notice upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least ten (10) Business Day' prior written notice and pursuant to payoff documentation in form and substance reasonably satisfactory to Agent, Term Loan Servicer and Lenders, Borrowers may, at their option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have complied with Section 2.12(c) and the Obligations, including the payment of all fees due and owing under any Fee Letter, are paid in full (other than inchoate indemnification obligations for which no claim has yet been made). Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of the Credit Parties contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent, Term Loan Servicer and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2 and the terms of any Fee Letter resulting from such termination (in each case, other than inchoate indemnification obligations for which no claim has yet been made). Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Credit Parties or any Account Debtor and applied to the Obligations, Agent shall have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage. Upon the payment in full, in cash in immediately available funds, of all Obligations and the termination of the Revolving Loan Commitments and Term Loan Commitments, as Borrower may reasonably request, Agent shall, at Borrower's sole cost and expense, execute and deliver such documents evidencing the release and termination of the security interest in the Collateral granted under this Agreement and the other Financing Documents pursuant to and in accordance with the terms of any applicable payoff documentation.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower and each Credit Party party hereto, hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party (a) is an entity as specified on Schedule 3.1, (b) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization specified on Schedule 3.1, (c) has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, (d) has all powers to own its assets and has powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such powers or Permits would not reasonably be expected to have a Material Adverse Effect, and (e) is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except in the case of this clause (e) where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (x) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (y) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Financing Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any

Governmental Authority other than (i) recordings, filings and other perfection actions in connection with the Liens granted to Agent under this Agreement or any Security Document and (ii) those obtained or made on or prior to the Closing Date and (d) do not violate, conflict with or cause a breach or a default under (i) any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as would not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Financing Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles. Each Financing Document has been duly executed and delivered by each Credit Party party thereto.

Section 3.4 Capitalization. The issued and outstanding equity securities of each of the Credit Parties (other than Viewray) as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding Equity Interest of each of the Credit Parties (other than Viewray) are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than those in favor of Agent for the benefit of Agent and Lenders, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties (other than Viewray) and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other Equity Interests of any Credit Party (other than Viewray), other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly in all material respects presents the financial position of such Credit Party as of such date and for such period then ended in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2021, there has been (a) no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party and (b) no fact, event or circumstance that could reasonably be expected to result in a Material Adverse Effect.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened in writing against, any Credit Party or any of their Subsidiaries, which, if adversely determined, could reasonably be expected to result in any judgment or liability of more than One Million Dollars ($1,000,000). There is no Litigation pending in which an adverse decision could reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Financing Documents.

Section 3.7 Ownership of Property. Each Borrower and each of its Subsidiaries is the lawful sole owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all material properties, accounts and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened in writing against any Credit Party, which could reasonably be expected to have a Material Adverse Effect. Hours worked and payments made to the employees of the Credit Parties have not been in material violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound, the result of which could reasonably be expected to have a Material Adverse Effect.

Section 3.10 Investment Company Act. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations.

(a) The Credit Parties and their Subsidiaries do not own any stock, partnership interest or other equity securities, except for Permitted Investments. Without limiting the foregoing, the Credit Parties and their Subsidiaries do not own or hold any Margin Stock.

(b) None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any Margin Stock or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, (including all applicable Healthcare Laws), except for such Laws the noncompliance with which could not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, (ii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services directly or indirectly to or for the benefit of any Blocked Person or Sanctioned Country, or (B) deals in, or otherwise engages in any transaction directly or indirectly relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

Section 3.13 Taxes. All federal income and franchise tax returns, reports and statements, all state and local income and franchise tax returns, reports and statements and all other material state and local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all Taxes (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be

added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Credit Party and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which would result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, would result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Financing Documents; Brokers. Except for fees payable to Agent, Term Loan Servicer and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Financing Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 [Reserved].

Section 3.17 Material Contracts. Except for the agreements set forth on Schedule 3.17, as of the Closing Date there are no Material Contracts. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Credit Party's knowledge, threatened in writing by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials, in each case except where the failure to obtain such document could not reasonably be expected to have a Material Adverse Effect; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Credit Party, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials in violation of applicable Law, is listed or, to such Credit Party's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Credit Party, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA, which claims could reasonably be expected to have a Material Adverse Effect.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property and License Agreements. A list of all Registered Intellectual Property of each Credit Party and all material in-bound license or sublicense agreements, and exclusive out-bound license or sublicense agreements (but, in each case, excluding in-bound licenses of over-the-counter and other software that is commercially available to the public and open source licenses in the Ordinary Course of Business), as of the Closing Date and, as updated pursuant to Section 4.15, is set forth on Schedule 3.19. Except for Permitted Licenses and Permitted Liens arising by operation of law, each Credit Party is the sole owner of its material Intellectual Property free and clear of any Liens. Each material patent owned or licensed by any Credit Party is valid and enforceable in all material respects and no part of the Material Intangible Assets has been judged invalid or unenforceable, in whole or in part, and to the best of Credit Parties' knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party in any material respect.

Section 3.20 Solvency. After giving effect to the Loan advance and the liabilities and obligations of each Credit Party under the Financing Documents, each Borrower and each additional Credit Party is Solvent.

Section 3.21 Full Disclosure. None of the written information (financial or otherwise) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Financing Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and the Lenders by Credit Parties (or their agents) have been prepared on the basis of the assumptions stated therein. Such projections represent each Credit Party's best estimate of such Credit Party's future financial performance and such assumptions are believed by such Credit Party to be fair and reasonable in light of current business conditions; *provided*, *however*, that Credit Parties can give no assurance that such projections will be attained. Agent and each Lender acknowledges and agrees that all financial performance projections delivered to Agent represent Borrowers' best good faith estimate of future financial performance and are based on assumptions believed by Credit Parties to be fair and reasonable in light of current market conditions, it being

acknowledged and agreed by Agent and Lenders that projections as to future events are not to be viewed as facts and that the actual results during the period or periods covered by such projections may differ from the projected results.

Section 3.22 Reserved.

Section 3.23 Subsidiaries. Credit Parties do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments. Credit Parties are in compliance with all requirements of this Agreement relating to the Restricted Foreign Subsidiaries, including the provisions of Section 4.11(e).

Section 3.24 Accuracy of Schedules. All information set forth in the Schedules to this Agreement is true, accurate and complete in all material respects as of the Closing Date. All information set forth in the Perfection Certificate is true, accurate and complete in all material respects as of the Closing Date.

Section 3.25 Eligible Account; Eligible Inventory.

(a) As to each Account that is identified by Borrowers as an Eligible Account in a Borrowing Base Certificate submitted to Agent, such Account is (i) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of services to such Account Debtor in the Ordinary Course of Business of the applicable Borrower, (ii) owed to the applicable Borrower without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (iii) not excluded as ineligible by virtue of one or more of the excluding criteria set forth in the definition of "Eligible Account".

(b) As to each item of Inventory that is identified by the applicable Borrowers as Eligible Inventory in a Borrowing Base Certificate submitted to Agent, such Inventory is (a) of good and merchantable quality, free from known defects, (b) not excluded as ineligible by virtue of one or more of the excluding criteria (set forth in the definition of "Eligible Inventory"), and (c) otherwise constitutes "Eligible Inventory" under such definition.

Section 3.26 Regulatory Matters.

(a) With respect to each material Product, (i) the Credit Parties and their Subsidiaries have received, and such Product is the subject of, all Regulatory Required Permits needed in connection with the testing, manufacture, marketing or sale of such Product as currently being conducted by or on behalf of the Credit Parties, and have provided Agent with all notices and other information required by Section 4.1, and (ii) such Product is being tested, manufactured, marketed or sold, as the case may be, by Credit Parties (or to the Credit Parties' knowledge, by any applicable third parties) in material compliance with all applicable Laws and Regulatory Required Permits.

(b) None of the Credit Parties or any Subsidiary thereof are in violation of any Healthcare Law in any material respect.

(c) To the Credit Parties' knowledge (after reasonable inquiry), none of the Credit Parties or their Subsidiaries' officers, directors, employees, shareholders, their agents or affiliates has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(d) Except as would not reasonably be expected to result in a Material Adverse Effect, each Product (i) has been and/or shall be manufactured, imported, possessed, owned, warehoused, marketed, promoted, sold, labeled, furnished, distributed and marketed and each service

has been conducted in accordance with all applicable Permits and Laws; and (ii) has been and/or shall be manufactured in accordance with Good Manufacturing Practices.

(e) No Credit Party, nor any Subsidiary thereof, is subject to any proceeding, suit or, to any Credit Party's knowledge, investigation by any federal, state or local government or quasi-governmental body, agency, board or authority or any other administrative or investigative body (including the Office of the Inspector General of the United States Department of Health and Human Services),which could reasonably be expected to result in a Material Adverse Effect.

(f) As of the Closing Date, there have been no Regulatory Reporting Events.

Section 3.27 Senior Indebtedness Status(a) . The Obligations of each Credit Party under this Agreement and each of the other Financing Documents ranks and shall continue to rank at least senior in priority of payment to all Debt that is contractually subordinated to the Obligations of each such Person under this Agreement and is designated as "Senior Indebtedness" (or an equivalent term) under all instruments and documents, now or in the future, relating to all Debt that is contractually subordinated to the Obligations under this Agreement of each such Person.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Credit Party agrees that:

Section 4.1 Financial Statements, Other Reports and Notices. The Credit Parties will deliver to Agent for distribution to each Lender:

(a) as soon as available, but no later than forty-five (45) days after the last day of each fiscal quarter (other than the last fiscal quarter of each fiscal year), a company prepared consolidated and consolidating balance sheet, cash flow and income statement (including year-to-date results) covering Viewray's and its Consolidated Subsidiaries' consolidated and consolidating operations during the period, prepared under GAAP (subject to normal year-end adjustments and the absence of footnote disclosures), consistently applied, setting forth in comparative form the corresponding figures as at the end of the corresponding fiscal quarter of the previous fiscal year and the projected figures for such period based upon the projections required hereunder, all in reasonable detail, certified by a Responsible Officer and in a form reasonably acceptable to Agent; *provided* that to the extent any of the foregoing is available on the SEC EDGAR website, delivery to Agent will be deemed to have occurred upon notice of such availability to Agent;

(b) upon Agent's reasonable request, together with the financial reporting package described in (a) above, evidence of payment and satisfaction of all payroll, withholding and similar taxes due and owing by all Credit Parties with respect to the payroll period(s) occurring during such month;

(c) as soon as available, but no later than ninety (90) days after the last day of Viewray's fiscal year, audited consolidated and consolidating financial statements prepared under GAAP, consistently applied, together with an unqualified opinion (other than a going concern qualification or exception as to the scope of such audit based solely on a determination that any Borrower has less than 12 months of liquidity due to an upcoming maturity date of the Obligations within twelve (12) months) on the financial statements from Deloitte & Touche LLP or another independent certified public accounting firm acceptable to Agent in its Permitted Discretion; *provided* that to the extent any of the foregoing is available on the SEC EDGAR website, delivery to Agent will be deemed to have occurred upon notice of such availability to Agent;

(d) within ten (10) days of delivery or filing thereof, copies of all proxy statements, financial statements and reports made available to such Credit Party's security holders or to any holders of Subordinated Debt and copies of all Form 10-K, 10-Q and 8-K and all registration statements filed by such Credit Party with any stock exchange on which any securities of any Credit Party are traded

and/or the SEC; *provided* that to the extent any of the foregoing is available on the SEC EDGAR website, delivery to Agent will be deemed to have occurred upon notice of such availability to Agent;

(e) a prompt, but in no event later than when the next Compliance Certificate is required to be delivered, written report of any legal actions pending or threatened in writing against any Credit Party or any of its Subsidiaries that could reasonably be expected to result in damages or costs to any Credit Party or any of its Subsidiaries of Five Hundred Thousand Dollars ($500,000) or more or otherwise could be reasonably expected to result in a Material Adverse Effect;

(f) within ten (10) Business Days of the end of each calendar month, deliver to Agent a certificate signed by a Responsible Officer, in form and substance reasonably satisfactory to Agent and describing in reasonable detail (a) the cash and Cash Equivalents of the Credit Parties as of the last day of such calendar, and (b) the Net Revenue of the Credit Parties on a trailing-twelve month basis determined as of the last day of the calendar month immediately prior such calendar month;

(g) within forty five (45) days after the start of each fiscal year, a detailed consolidated budget and projections for the forthcoming two fiscal years, on a quarterly basis for the current year and on an annual basis for the subsequent year, and to the extent such budget and projections are updated prior to the delivery for the following fiscal year, such updated projections within forty five (45) days of the date such projections are updated;

(h) promptly (but in any event within ten (10) days of any request therefor) such readily available other budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Credit Parties, their business and the Collateral as Agent may from time to time reasonably request;

(i) within 45 days of the end of each fiscal quarter, deliver to Agent (i) a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing (x) compliance with the financial covenants set forth in Article 6, as applicable, and (y) the cash and Cash Equivalents of (A) Credit Parties taken as a whole, and (B) the Restricted Foreign Subsidiaries taken as a whole, and (ii) a Backlog Report;

(j) within twenty (20) days after the last day of each month, deliver to Agent a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts receivable and accounts payable (by invoice date);

(k) written notice to Agent promptly, but in any event within ten (10) Business Days of a Responsible Officer of a Credit Party receiving written notice or otherwise becoming aware that:

(i) any development, testing, and/or manufacturing of any Product that is material to the Credit Parties' or their Subsidiaries business should cease;

(ii) the marketing or sales of a Product, which is material to the Credit Parties' or their Subsidiaries' business and which has been approved for marketing and sale, should cease (or be required to cease) or such Product should be withdrawn from the marketplace;

(iii) any Governmental Authority is conducting an investigation or review (other than routine reviews in the Ordinary Course of Business) of any Regulatory Required Permit the loss of which could be reasonably expected to result in a Material Adverse Effect;

(iv) any Regulatory Required Permit, the loss of which could be reasonably expected to result in a Material Adverse Effect, has been revoked or withdrawn;

(v) any Governmental Authority, including without limitation the FDA, the Office of the Inspector General of HHS or the United States Department of Justice, has commenced any action against a Credit Party or a Subsidiary thereof, any action to enjoin a Credit Party or a Subsidiary thereof from conducting their businesses at any facility owned or used by them or for any material civil penalty, injunction, seizure or criminal action;

(vi) receipt by a Credit Party or any Subsidiary thereof, or any material contract manufacturer for the Credit Parties or any of their Subsidiaries, from the FDA a warning letter, Form FDA-483, "Untitled Letter," other correspondence or notice setting forth alleged violations of laws and regulations enforced by the FDA with regard to any material Product or the manufacture, processing, packing, or holding thereof;

(vii) any Credit Party or any Subsidiary thereof receives any payments directly (including through any third party payment processor) from Medicare, Medicaid, or TRICARE;

(viii) any significant failures in the manufacturing of any material Product have occurred such that the amount of such Product successfully manufactured in accordance with all specifications thereof and the required payments to be made to any Credit Party or any Subsidiary therefor in any month shall decrease significantly with respect to the quantities of such Product and payments produced in the prior month; or

(ix) any Credit Party or any Subsidiary thereof engaging in any Recalls, Market Withdrawals, or other forms of product retrieval from the marketplace of any Products (other than discrete batches or lots that are not material in quantity or amount and are not made in conjunction with a larger recall) (each of the events set forth in clauses (i)-(ix) a "**Regulatory Reporting Event**");

(l) promptly after the request by any Lender, all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act;

(m) promptly, but in any event within five (5) Business Days, after any Responsible Officer of any Credit Party obtains knowledge of the occurrence of any event or change (including, without limitation, any notice of any violation of applicable Healthcare Laws) that has resulted or would reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect, a certificate of a Responsible Officer specifying the nature and period of existence of any such event or change, or specifying the notice given or action taken by such holder or Person and the nature of such event or change, and what action the applicable Credit Party or Subsidiary has taken, is taking or proposes to take with respect thereto; and

(n) Credit Parties shall promptly (and in any event within five (5) Business Days of the occurrence thereof) provide Agent and each Lender with written notice of the occurrence of a Springing IP Lien Event, which notice shall be accompanied by a certificate from an authorized executive officer from each Credit Party (A) acknowledging that Springing IP Lien Event has occurred, (B) specifying the date on which the Springing IP Lien Event occurred, and (C) acknowledging that Agent may exercise any rights it may have under this Agreement or any other Financing Document with respect to the Springing IP Lien Event, subject to the terms and conditions of this Agreement and the other Financing Documents. Without limiting the foregoing, Credit Parties shall promptly (and in any event within ten (10) Business Days of the occurrence of a Springing IP Lien Event) provide Agent a supplement to the Intellectual Property Security Agreement certifying to and attaching true, correct and complete copies of updated schedules to the Intellectual Property Security Agreement and certifying that all Intellectual Property owned by each Credit Party and registered in the United States as of the date of such certification is reflected on such schedules (other than Excluded Property).

Section 4.2 Payment and Performance of Obligations. Each Credit Party (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), pay all amounts due and owing in respect of (i) all federal Taxes (including without limitation, payroll and withholdings tax liabilities) and (ii) all material foreign and state Taxes and other local Taxes (including without limitation, payroll and withholdings tax liabilities), in each case, on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Credit Party will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, (a) their respective existence and (b) their respective rights, privileges and franchises necessary or desirable in the normal conduct of business, unless, solely in the case of this clause (b), a failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Credit Party will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business, or upon which any Borrowing Base is calculated, becomes damaged or destroyed, each Credit Party will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Agent agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Credit Parties shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any.

(c) Each Credit Party will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage, in each case against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; *provided*, *however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Credit Party will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable

to Agent. Credit Parties shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Credit Parties' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days (or ten (10) days for nonpayment of premium) after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within five (5) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Credit Party, and (v) at least thirty (30) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Credit Party fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Credit Parties' expense to protect Agent's interests in the Collateral. This insurance may, but need not, protect such Credit Party's interests. The coverage purchased by Agent may not pay any claim made by such Credit Party or any claim that is made against such Credit Party in connection with the Collateral. Such Credit Party may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Credit Party has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Credit Parties will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Credit Party is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Credit Party will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws (including all Healthcare Laws) and Material Contracts, except to the extent that failure to so comply could not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien (other than a Permitted Lien) upon either (i) a material portion of the assets of any such Person in favor of any Governmental Authority, or (ii) any Collateral which is part of the Borrowing Base (other than, in each case, any Permitted Lien).

Section 4.6 Inspection of Property, Books and Records. Each Credit Party will keep, and will cause each Subsidiary to keep, proper books of record substantially in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities; and will permit, and will cause each Subsidiary to permit, during normal business hours, at the sole cost of the applicable Credit Party or any applicable Subsidiary, representatives of Agent to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective operations and the Collateral, to evaluate and make physical verifications and appraisals of the Inventory and other Collateral in any manner and through any medium that Agent considers advisable, to verify the amount and age of the Accounts, the identity and credit of the respective Account Debtors, to review the billing practices of Credit Parties and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of an Event of Default which is continuing (i) such inspections and audits shall be conducted at Credit Parties' expense no more often than one (1) time every twelve (12) months, and (ii) Agent exercising any rights pursuant to this Section 4.6 shall give the applicable Credit Party or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or Event of Default or any time during which Agent reasonably believed a Default or Event of Default exists.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of the Term Loan Tranche 1 borrowing solely for (a) payment of transaction fees incurred in connection with the Financing Documents, (b) the payment in full on the Closing Date of certain existing Debt and (c) for working capital needs of Borrowers and their Subsidiaries. Borrowers shall use the proceeds of any Term Loan Tranche 2 borrowing solely for (a) transaction fees incurred in connection with the Financing Documents, and (b) working capital needs of the Borrowers and their Subsidiaries. Borrowers shall use the proceeds of Revolving Loans solely for (a) transaction fees incurred in connection with the Financing Documents and the refinancing on the Closing Date of Debt, and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use. No portion of the proceeds of the Loans will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for purchasing or carrying Margin Stock or for any other purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board of Governors of the Federal Reserve System, including Regulation T, U, or X of the Federal Reserve Board.

Section 4.8 **[Reserved]**.

Section 4.9 Notices of Material Contracts, Litigation and Defaults.

(a) Credit Parties shall promptly (but in any event within five (5) Business Days) provide written notice to Agent after any Credit Party or Subsidiary receives or delivers any notice of termination or default or similar notice in connection with any Material Contract, and (ii) Credit Parties shall provide, together with the next quarterly Compliance Certificate required to be delivered under this Agreement, written notice to Agent after any Credit Party or Subsidiary (1) executes and delivers any material amendment, consent, waiver or other modification to any Material Contract or (2) enters into new Material Contract and shall, upon request of Agent, promptly provide Agent a copy thereof.

(b) Credit Parties shall promptly (but in any event within five (5) Business Days) provide written notice to Agent (i) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party, in each case, which, if adversely determined, would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (ii) upon any Credit Party becoming aware of the existence of any Default or Event of Default, (iii) of any strikes or other labor disputes pending or, to any Credit Party's knowledge, threatened against any Credit Party, in each case, that could reasonably be expected to have a Material Adverse Effect, (iv) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that could reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property rights of others that could reasonably be expected to have a Material Adverse Effect, and (v) of all returns, recoveries, disputes and claims that would reasonably be expected to result in liability of more than $500,000 in the aggregate. Credit Parties represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice is required under this Section 4.9(b).

(c) Each Credit Party shall provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clauses (a) and (b) above and any notice given in respect of a Regulatory Reporting Event. From the date hereof and continuing through the termination of this Agreement, each Credit Party shall make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Credit Party, such Credit Party will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws. Without limiting the generality of the foregoing, each Credit Party shall, and shall cause each other Credit Party to, comply with each Environmental Law requiring the performance at any real property by any Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Credit Parties will provide Agent within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination as required by Environmental Law and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any such Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment could reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances; Joinder.

(a) Each Credit Party will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (other than in respect of Excluded Perfection Assets and subject only to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) cause all Subsidiaries of Credit Parties (other than Restricted Foreign Subsidiaries) to be jointly and severally obligated with the other Credit Parties under all covenants and obligations under this Agreement, including the obligation to repay the Obligations.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Credit Parties shall timely and fully pay and perform its obligations under all material leases and other agreements with respect to each leased location where any Collateral is or may be located.

(d) Credit Parties shall provide Agent with at least thirty (30) days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create (or to the extent permitted under this Agreement, acquire) a new Subsidiary. Upon the formation (or to the extent permitted under this Agreement, acquisition) of a new Subsidiary, Credit Parties shall (within thirty (30) days): (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding Equity Interests of such new Subsidiary owned directly or indirectly by any Credit Party (except to the extent constituting Excluded Property), along with undated stock or equivalent powers for such certificates, executed in blank; (ii) cause the new Subsidiary (other than Restricted Foreign Subsidiaries) to take such other

actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien (subject to Permitted Liens which have priority by operation of Law) on all real and personal property (in the case of the perfection of the Liens granted subject to the Excluded Perfection Assets) of such Subsidiary in existence as of such date and in all after acquired property (in each case, other than Excluded Property), which first priority Liens are required to be granted pursuant to this Agreement; (iii) cause such new Subsidiary (other than Restricted Foreign Subsidiaries) to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iv) cause the new Subsidiary (other than Restricted Foreign Subsidiaries) to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorizing the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Agent, in each case, in form and substance satisfactory to Agent (the requirements set forth in clauses (i)-(iv), collectively, the "**Joinder Requirements**").

(e) If, at the end of any Defined Period ending on the last day of a fiscal quarter (commencing with the fiscal quarter ending December 31, 2022), (i) revenue (as determined in accordance GAAP) attributable solely to the Borrowers and Guarantors (and not, for the avoidance of doubt, to any Restricted Foreign Subsidiary) for such Defined Period is less than ninety percent (90%) of the aggregate revenue (as determined in accordance with GAAP) of Credit Parties and their Consolidated Subsidiaries for such Defined Period, then Borrowers shall promptly (and in any event with thirty (30) days of the date on which financial statements were delivered in respect of such Defined Period pursuant to Section 4.1(a)) cause certain Restricted Foreign Subsidiaries designated by Agent, in its reasonable discretion and in consultation with Borrower Representative, to become Credit Parties in accordance with the Joinder Requirements (as though such designated Subsidiaries were new Subsidiaries and no longer Restricted Foreign Subsidiaries) pursuant to reasonable documentation (including any foreign law governed documentation as may be necessary or reasonably desirable) such that, following such joinder, the revenue (as determined in accordance with GAAP) attributable solely to the Borrowers and Guarantors for such Defined Period is greater than or equal to ninety percent (90%) of the aggregate revenue (as determined in accordance with GAAP) of Credit Parties and their Consolidated Subsidiaries for such Defined Period, (ii) total assets (as determined in accordance GAAP) attributable solely to the Borrowers and Guarantors (and not, for the avoidance of doubt, to any Restricted Foreign Subsidiary) as of the last day of such Defined Period is less than ninety percent (90%) of the aggregate total assets (as determined in accordance with GAAP) of Credit Parties and their Consolidated Subsidiaries as of the last day of such Defined Period, then Borrowers shall promptly (and in any event with thirty (30) days of the date on which financial statements were delivered in respect of such Defined Period pursuant to Section 4.1(a)) cause certain Restricted Foreign Subsidiaries designated by Agent, in its reasonable discretion and in consultation with Borrower Representative, to become Credit Parties in accordance with the Joinder Requirements (as though such designated Subsidiaries were new Subsidiaries and no longer Restricted Foreign Subsidiaries) pursuant to reasonable documentation (including any foreign law governed documentation as may be necessary or reasonably desirable) such that, following such joinder, the total assets (as determined in accordance with GAAP) attributable solely to the Borrowers and Guarantors as of the last day of such Defined Period is greater than or equal to ninety percent (90%) of the aggregate total assets (as determined in accordance with GAAP) of Credit Parties and their Consolidated Subsidiaries as of the last day of such Defined Period or (iii) (x) revenue (as determined in accordance with GAAP) attributable to any Restricted Foreign Subsidiary individually for such Defined Period is greater than five percent (5%) of aggregate revenue (as determined in accordance with GAAP) of Credit Parties and their Consolidated Subsidiaries for such Defined Period or (y) the total assets (as determined in accordance with GAAP) of any Restricted Subsidiary individually as of the last day of such Defined Period is greater than five percent (5%) of the consolidated total assets (as determined in accordance with GAAP) of the Credit Parties and their Consolidated Subsidiaries as of the last day of such Defined Period, then Borrowers

shall promptly (and in any event with thirty (30) days of the date on which financial statements were delivered in respect of such Defined Period pursuant to Section 4.1(a)) cause such Restricted Foreign Subsidiaries (as consented to by Agent), to become Credit Parties in accordance with the Joinder Requirements (as though such designated Subsidiaries were new Subsidiaries and no longer Restricted Foreign Subsidiaries) pursuant to reasonable documentation (including any foreign law governed documentation as may be necessary or reasonably desirable); *provided* that with respect to any Restricted Foreign Subsidiary, in the event that Borrower Representative provides Agent with evidence reasonably satisfactory to Agent that (A) the grant of a continuing pledge and security interest in and to the assets of such Restricted Foreign Subsidiary, (B) the guaranty of the Obligations of the Borrowers by such Restricted Foreign Subsidiary, and/or (C) the provision of a joinder to become a Borrower under this Agreement by such Restricted Foreign Subsidiary, would reasonably be expected to have a material adverse tax consequence on the Borrower, then such Restricted Foreign Subsidiary shall not at such time be required to become a Credit Party. Following any such joinder, such designated foreign Subsidiaries and/or U.S. Holdcos, as applicable, shall no longer be Restricted Foreign Subsidiaries and shall be Credit Parties for all purposes hereunder and under the other Financing Documents and shall not be re-designated as Restricted Foreign Subsidiaries without Required Lenders' prior written consent (which may be given or withheld in their sole discretion). So long as Borrower maintains Credit Party Unrestricted Cash of at least $100,000,000, Borrower shall be permitted to create any such Restricted Foreign Subsidiary upon five (5) Business Days prior written notice to Agent.

Section 4.12 Reserved.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Credit Parties (without requiring any of them to act as such) with full power of substitution, exercisable only upon the occurrence and during the continuance of an Event of Default, to do the following: (a) endorse the name of Credit Parties upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Credit Parties and constitute collections on Credit Parties' Accounts; (b) so long as Agent has provided not less than three (3) Business Days' prior written notice to any Credit Party to perform the same and such Credit Party has failed to take such action, execute in the name of Credit Parties any schedules, assignments, instruments, documents, and statements that Credit Parties are obligated to give Agent under this Agreement; (c) take any action Credit Parties are required to take under this Agreement; (d) so long as Agent has provided not less than three (3) Business Days' prior written notice to any Credit Party to perform the same and such Credit Party has failed to take such action, do such other and further acts and deeds in the name of Credit Parties that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) do such other and further acts and deeds in the name of Credit Parties that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

(a) A copy of all data and other information relating to Accounts shall at all times be kept by Credit Parties, at their respective principal offices and shall not fail to be available at such principal offices without obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Borrowers shall provide prompt written notice to each Person who either is currently an Account Debtor or becomes an Account Debtor at any time following the date of this Agreement that directs each Account Debtor to make payments into the Lockbox, and hereby authorizes Agent, upon Borrowers' failure to send such notices within ten (10) days after the date of this Agreement (or ten (10) days after the Person becomes an Account Debtor), to send any and all similar notices to such Person. Agent reserves the right to notify Account Debtors that Agent has been granted a Lien upon all Accounts.

(c) Borrowers will conduct a physical count of the Inventory at least twice per year and at such other times as Agent requests, and Borrowers shall provide to Agent a written accounting of

such physical count in form and substance satisfactory to Agent. Each Borrower will use commercially reasonable efforts to at all times keep its Inventory in good and marketable condition. In addition to the foregoing, from time to time, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of Inventory owned by each Borrower or any Subsidiaries; *provided* that if no Event of Default has occurred and is continuing, such appraisal of Inventory shall be conducted not more often than once a year.

Section 4.15 Schedule Updates. Borrower shall, in the event of any information in the Schedule 3.19, Schedule 5.14, Schedule 9.2(b) or Schedule 9.2(d) becoming outdated, inaccurate, incomplete or misleading, deliver to Agent, together with the next quarterly Compliance Certificate required to be delivered under this Agreement after such event a proposed update to such Schedule correcting all outdated, inaccurate, incomplete or misleading information.

Section 4.16 Intellectual Property and Licensing.

(a) Together with each Compliance Certificate required to be delivered pursuant to Section 4.1(i) with respect to the last month of a fiscal quarter to the extent (i) any Credit Party or Subsidiary acquires and/or develops any new Registered Intellectual Property, (ii) any Credit Party or Subsidiary enters into or becomes bound by any additional material in-bound license or sublicense agreement, any additional exclusive out-bound license or sublicense agreement or other material agreement with respect to rights in Intellectual Property (other than over-the-counter software, software that is commercially available to the public and open source licenses), or (iii) there occurs any other material change in any Credit Party's or Subsidiary's Registered Intellectual Property, material in-bound licenses or sublicenses or exclusive out-bound licenses or sublicenses from that listed on Schedule 3.19 together with such Compliance Certificate, deliver to Agent an updated Schedule 3.19 reflecting such updated information. With respect to any updates to Schedule 3.19 involving exclusive out-bound licenses or sublicenses, such licenses shall be consistent with the definitions of and limitations herein pertaining to Permitted Licenses.

(b) On the Closing Date, each Credit Party will execute and deliver to Agent the Intellectual Property Security Agreement. The Intellectual Property Security Agreement shall be held in escrow by Agent, and shall not be in force and effect, unless and until the occurrence of the Springing IP Lien Event, at which time (i) the Intellectual Property Security Agreement shall immediately and automatically become effective without any further action or consent by any Credit Party and (ii) Agent shall be automatically authorized to file the Intellectual Property Security Agreement (including any updated schedules thereto delivered pursuant to Section 4.16(h)) with the United States Patent and Trademark Office and/or United States Copyright Office, as applicable.

(c) Upon the occurrence of a Springing IP Lien Event and continuing at all times thereafter (whether or not the Springing IP Lien Event continues), then automatically and without notice or any further action by Agent, any Lender or any Credit Party (i) Agent shall be authorized to file UCC financing statements, financing statement amendments and security agreements (including any Intellectual Property Security Agreement) necessary or desirable to perfect such security interest in the Intellectual Property (other than Excluded Property and any security interest that is not required to be perfected under the terms of this Agreement), and (ii) each Credit Party shall execute such other agreements and take such other actions as Agent may reasonably request to establish, perfect or protect Agent's security interest in the Intellectual Property of Credit Parties.

(d) Following the occurrence of an Springing IP Lien Event, if Credit Parties obtain any Registered Intellectual Property, Credit Parties shall promptly (and in any event within fifteen (15) days of obtaining same) notify Agent and promptly execute such documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest (subject to Permitted Liens) in favor of Agent, for the ratable benefit of Lenders, in such Registered Intellectual Property.

(e) Credit Parties shall take such commercially reasonable steps as Agent reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (x) all Material Contracts to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise be restricted or prohibited by Law or by the terms of any such Material Contract, whether now existing or entered into in the future, and (y) Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's rights and remedies under this Agreement and the other Financing Documents.

(f) Credit Parties and each Subsidiary thereof shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets, subject to Permitted Liens. Credit Parties shall cause all Registered Intellectual Property to be duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Credit Parties and their Subsidiaries shall at all times conduct its business without material infringement or material claim of infringement of any valid Intellectual Property rights of others. Credit Parties shall, and shall cause their Subsidiaries to, (i) protect, defend and maintain the validity and enforceability of its Material Intangible Assets (ii) promptly advise Agent in writing of material infringements of its Material Intangible Assets, or of a material claim of infringement by Credit Parties on the Intellectual Property rights of others; and (iii) not allow any of Credit Parties' Material Intangible Assets to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Credit Parties shall not become a party to, nor become bound by, any material license or other agreement with respect to which any Credit Party is the licensor or licensee (other than in-bound licenses of over-the-counter software and other software that is commercially available to the public and open source licenses) that prohibits or otherwise restricts Credit Party from granting a security interest in Credit Party's interest in such license or agreement or other property.

Section 4.17 Regulatory Covenants.

(a) Credit Parties shall have, and shall ensure that it and each of its Subsidiaries has, each necessary Permit and other material rights from, and have made all necessary declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in all material respects in the ownership, management and operation of the business or the assets of any Credit Party and Subsidiaries thereof and Credit Parties shall take, and cause each of their Subsidiaries to take, such reasonable actions to ensure that no Governmental Authority has taken action to limit, suspend or revoke any such Permit. Credit Parties shall ensure, and cause each of their Subsidiaries to ensure, that all such necessary Permits are valid and in full force and effect and Credit Parties and their Subsidiaries are in material compliance with the terms and conditions of all Permits, except where failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b) In connection with the development, testing, manufacture, marketing or sale of each and any Product by any Credit Party, each Credit Party shall have obtained and comply in all respects with all Regulatory Required Permits at all times issued or required to be issued by any Governmental Authority, specifically including the FDA, with respect to such development, testing, manufacture, marketing or sales of such Product by such Credit Party as such activities are at any such time being conducted by such Credit Party, except where failure to do so would not reasonably be expected to have a Material Adverse Effect.

(c) Except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect, Credit Parties will, and will cause their Subsidiaries to, timely file or caused to be timely filed (after giving effect to any extension duly obtained), all material notifications, reports, submissions, material Permit renewals and reports required by applicable Healthcare Laws (which reports will be materially accurate and complete in all material respects and not misleading in any material respect and shall not remain open or unsettled).

ARTICLE 5 - NEGATIVE COVENANTS

Each Credit Party agrees that:

Section 5.1 Debt; Contingent Obligations.

(a) No Credit Party will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt.

(b) No Credit Party will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

(c) No Credit Party will, or will permit any Subsidiary to, directly or indirectly, purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Debt prior to its scheduled date for payment (except (i) with respect to the Obligations permitted under this Agreement, (ii) for Capital Lease obligations and (iii) for Subordinated Debt solely to the extent permitted by Section 5.5).

Section 5.2 Liens. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Credit Party will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents and any agreements for purchase money debt and Capital Leases permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Credit Party or any Subsidiary; (ii) pay any Debt owed to any Credit Party or any Subsidiary; (iii) make loans or advances to any Credit Party or any Subsidiary; or (iv) transfer any of its property or assets to any Credit Party or any Subsidiary, in each case under this Section 5.4 other than reasonable and customary anti-assignment provisions contained in licenses, contracts and other agreements so long as such anti-assignment provisions do not cause such licenses, contracts or other agreements to constitute Excluded Property.

Section 5.5 Payments and Modifications of Subordinated Debt. No Credit Party will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control. No Credit Party will, or will permit any Subsidiary to, directly or indirectly:

(a) consolidate or merge or amalgamate with or into any other Person other than (i) consolidations or mergers among Borrowers so long as in any consolidation or merger involving Viewray, Viewray is the surviving entity, (ii) consolidations or mergers among a Guarantor and a Borrower so long as the Borrower is the surviving entity, (iii) consolidations or mergers among Guarantors, and (iv) consolidations or mergers among Subsidiaries that are not Credit Parties,; or

(b) make or consummate any Asset Dispositions other than Permitted Asset Dispositions.

Section 5.7 Purchase of Assets, Investments. No Credit Party will, or will permit any Subsidiary to, directly or indirectly:

(a) acquire, make, own, hold, or otherwise consummate any Investment (including for the avoidance of doubt, any Acquisition) other than Permitted Investments, or enter into any agreement to acquire, make, own or hold any Investment other than Permitted Investments;

(b) engage in or establish any joint venture with any other Person; or

(c) without limiting the foregoing, no Credit Party shall, nor will any Credit Party permit any Subsidiary to, purchase or carry Margin Stock.

Section 5.8 Transactions with Affiliates. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Credit Party or any Subsidiary thereof, except for (a) transaction disclosed on Schedule 5.8 on the Closing Date, (b) transactions that are in the Ordinary Course of Business upon fair and reasonable terms, and, in each case, which contain terms that are no less favorable to the applicable Credit Party or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party and which are disclosed to Agent in writing prior to the parties consummating such transaction, (c) transactions among Credit Parties that are permitted by this Agreement, (d) transactions constituting (i) issuances of Subordinated Debt to investors and (ii) issuance of other equity securities, in each case, not otherwise in contravention of this Agreement, and (e) reasonable and customary director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans and indemnification arrangements approved by the relevant board of directors, board managers or equivalent corporate body in the Ordinary Course of Business).

Section 5.9 Modification of Organizational Documents. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; or (b) would reasonably be expected to be materially adverse to the rights, interests or privileges of Agent, Term Loan Servicer or the Lenders or their ability to enforce the same.

Section 5.11 Conduct of Business. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and businesses reasonably related or incidental thereto. No Credit Party will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, change its normal billing payment and reimbursement policies and procedures with respect to its Accounts in any material respect (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 [Reserved].

Section 5.13 Limitation on Sale and Leaseback Transactions. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person whereby, in a substantially contemporaneous transaction, any Credit Party or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts.

(a) No Credit Party will, directly or indirectly, establish any new Deposit Account or Securities Account (other than an Excluded Account) unless such Credit Party and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account. Without limiting the foregoing, Credit Parties shall ensure that each Deposit Account or Securities Account of a Credit Party (other than Excluded Accounts) is subject to a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable.

(b) Credit Parties represent and warrant that Schedule 5.14 (as updated by the Compliance Certificate delivered to Agent from time to time after the Closing Date) lists all of the Deposit Accounts and Securities Accounts of each Credit Party as of the Closing Date and as of the date on which each Compliance Certificate is delivered. The provisions of this Section requiring Deposit Account Control Agreements shall not apply to Excluded Accounts.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Credit Parties that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Credit Parties and their principals, which information includes the name and address of each Credit Party and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any contracts or agreements or otherwise engage in transactions directly or indirectly with or related to any Blocked Person or any Person listed on the OFAC Lists or any Sanctioned Country. Each Credit Party shall immediately notify Agent if such Credit Party has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person or (a) is convicted on, (b) enters into a settlement agreement with a U.S. government agency, (c) pleads nolo contendere to, (d) is indicted on, or (e) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering, Anti-Terrorism Laws or export control laws. No Credit Party will, or will permit any Subsidiary to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing directly or indirectly with or related to any Blocked Person or Sanctioned Country, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person or Sanctioned Country, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

Section 5.16 Change in Accounting. No Credit Party shall, and no Credit Party shall suffer or permit any of its Subsidiaries to, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP or required to be GAAP compliant or (ii) change the fiscal year or method for determining fiscal quarters of any Credit Party or of any Consolidated Subsidiary.

Section 5.17 Investment Company Act. No Credit Party shall, nor shall it permit any Subsidiary to, directly or indirectly, engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of the Investment Company Act.

Section 5.18 Agreements Regarding Receivables. No Credit Party may backdate, postdate or redate any of its invoices. No Credit Party may make any sales on extended dating or credit terms with respect to Eligible Accounts beyond that customary in such Credit Party's industry and consented to in advance by Agent. In addition to the Borrowing Base Certificate to be delivered in accordance with this Agreement, Borrower Representative shall notify Agent promptly upon any Borrower's learning thereof, in the event any Eligible Account becomes ineligible for any reason, other than the aging of such

Account, and of the reasons for such ineligibility. Borrower Representative shall also notify Agent promptly of all material disputes and claims with respect to the Accounts of any Borrower, and such Borrower will settle or adjust such material disputes and claims at no expense to Agent; provided, however, no Borrower may, without Agent's consent, grant (a) any discount, credit or allowance in respect of its Accounts (i) which is outside the ordinary course of business or (ii) which discount, credit or allowance exceeds an amount equal to $500,000 in the aggregate with respect to any individual Account of (b) any materially adverse extension, compromise or settlement to any customer or account debtor with respect to any then Eligible Account. Nothing permitted by this Section 5.16, however, may be construed to alter in any the criteria for Eligible Accounts, or Eligible Inventory provided in Section 1.1.

Section 5.19 Restricted Foreign Subsidiaries.

(a) No Credit Party shall permit the total amount of cash and Cash Equivalents held by Restricted Foreign Subsidiaries (taken as a whole) to exceed $100,000 at any time, with amounts in excess of $100,000 transferred to an account of Borrowers maintained at SVB that is subject to a Deposit Account Control Agreement within thirty (30) days (or such later date as Agent shall determine, in its sole but reasonable discretion), after receipt of such amounts by the Restricted Foreign Subsidiaries.

(b) No Credit Party will, or will permit any Subsidiary to, commingle any of its assets (including any bank accounts, cash or Cash Equivalents) with the assets of any Person other than a Credit Party and (ii) no Credit Party will permit any Restricted Foreign Subsidiary to commingle any of its assets (including any bank accounts, cash or Cash Equivalents) with the assets of a Credit Party.

(c) No Credit Party shall permit any Restricted Foreign Subsidiary to own, or have an exclusive license in respect of, any Material Intangible Assets.

ARTICLE 6 – FINANCIAL COVENANTS

Section 6.1 Minimum Net Revenue. Borrowers shall not permit Net Revenue for any applicable Defined Period, as tested quarterly on the last day of each Defined Period, to be less than the Applicable Minimum Net Revenue Threshold for such Defined Period.

Section 6.2 Minimum Backlog. Borrowers shall not permit Backlog for any applicable Defined Period, as tested quarterly on the last day of each Defined Period, to be less than the Applicable Minimum Backlog Threshold for such Defined Period.

Section 6.3 Evidence of Compliance. Borrowers shall furnish to Agent, as required by Section 4.1, a Compliance Certificate as evidence of (a) quarterly cash and Cash Equivalents of (x) Credit Parties, taken as a whole and (y) the Restricted Foreign Subsidiaries, taken as a whole, (b) as applicable, Borrowers' compliance with the covenants in this Article 6, and (c) that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (i) a statement and report, in form and substance reasonably satisfactory to Agent, detailing Borrowers' calculations, and (ii) if requested by Agent, back-up documentation (including, without limitation, bank statements, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 – CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loans on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist attached hereto as Exhibit F, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders in their reasonable discretion:

(a) the receipt by Agent of executed counterparts of this Agreement and the other Financing Documents;

(b) the payment of all fees, expenses and other amounts due and payable under each Financing Document;

(c) since December 31, 2021, the absence of any material adverse change in any aspect of the business, operations, properties or condition (financial or otherwise) of any Credit Party, or any event or condition which would reasonably be expected to result in such a material adverse change; and

(d) the receipt of the initial Borrowing Base Certificate, prepared as of the Closing Date.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan (including the initial Loans), is subject to the satisfaction of the following additional conditions:

(a) (i) in the case of each borrowing of Revolving Loans, receipt by Agent of a Notice of Borrowing and an updated Borrowing Base Certificate, and (ii) in the case of a Term Loan advance, receipt by Agent and Term Loan Servicer of a Notice of Borrowing in accordance with the provisions of Section 2.1(a)(ii);

(b) the fact that, immediately after such borrowing and after application of the proceeds thereof, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit;

(c) with respect to any Term Loan Tranche 2, the audited consolidated financial statements prepared under GAAP and the Compliance Certificate delivered by Borrowers pursuant to Section 4.1(c) in connection with the fiscal year ending December 31, 2023, in each case, that demonstrates to Agent's and each Term Lender's satisfaction that the Gross Margin Percentage for the Defined Period ending on December 31, 2023 is greater than or equal to 17.5%;

(d) the fact that, immediately before and after such advance, no Default or Event of Default shall have occurred and be continuing;

(e) for Loans made on the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date;

(f) for Loans made after the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete in all material respects on and as of the date of such borrowing, except to the extent that any such representation or warranty relates to a specific earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such specific earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(g) with respect to any Term Loan Tranche 2 borrowing, Agent determines to its satisfaction, in good faith, that there has not been any material impairment in the general affairs,

management, results of operation, financial condition or the prospect of repayment of the Obligations, or any material adverse deviation by Credit Parties from the most recent business plan of Credit Parties presented to and accepted by Agent; and

(h) there shall not have occurred any fact, event or condition which would reasonably be expected to result in a Material Adverse Effect, as determined by Required Lenders in their reasonable discretion.

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Credit Party on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Credit Party that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Credit Parties' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized. Notwithstanding anything to the contrary herein, after the Closing Date, Credit Parties shall not be liable for the expenses associated with such searches conducted more than once during each twelve month period unless an Event of Default has occurred and is continuing.

Section 7.4 Post-Closing Requirements. Unless the Required Lenders shall otherwise consent, Credit Parties shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 attached hereto on or before the date set forth for each such item thereon, each of which shall be completed or provided in form and substance reasonably satisfactory to Agent.

ARTICLE 8 – RESERVED

ARTICLE 9 – SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and without limiting any other grant of a Lien and security interest in any Security Document, each Credit Party hereby assigns, grants and pledges to Agent, for the benefit of itself and Lenders, and, subject only to Permitted Liens that may have priority as a matter of applicable Law, a continuing first priority Lien on and security interest in, upon, and to the property and assets set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected (except in respect of Excluded Perfection Assets) by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2(b) (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit

Account for which Deposit Account Control Agreements are required pursuant to this Agreement, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens. Except to the extent not required pursuant to the terms of this Agreement, all actions by each Credit Party necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

(b) Schedule 9.2(b) (as updated by the Compliance Certificates delivered to Agent from time to time after the Closing Date) sets forth (i) each chief executive office and principal place of business of each Credit Party and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Credit Parties regarding any Collateral or any of Credit Party's assets, liabilities, business operations or financial condition are kept, which such Schedule 9.2(b) indicates in each case which Credit Parties have Collateral and/or books and records located at such address, and, in the case of any such address not owned by one or more of the Credit Parties, indicates the nature of such location (e.g., leased business location operated by Credit Parties, third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Credit Party as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Credit Party to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the granting of the security interest or the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Credit Party and any other Person relating to any such collateral, including any license to which a Credit Party is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Credit Party or any other Person.

(d) As of the Closing Date, except as set forth on Schedule 9.2(d) and except to the extent constituting Excluded Perfection Assets, no Credit Party has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (in each case, other than Excluded Perfection Assets or Equity Interests in any Subsidiaries of such Credit Party disclosed on Schedule 3.4), and Credit Parties shall give notice to Agent promptly (but in any event not later than the delivery by Credit Parties of the next quarterly Compliance Certificate required pursuant to Section 4.1 above) upon the acquisition by any Credit Party of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property, in each case, other than Excluded Perfection Assets. No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Credit Party has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Credit Parties is maintained).

(e) Credit Parties shall not take any of the following actions or make any of the following changes unless Credit Parties have given at least thirty (30) days prior written notice to Agent of Credit Parties' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Credit Party as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is; *provided* that in no event shall a Credit Party organized under the laws of the United States or any state thereof be reorganized under the laws of a jurisdiction other than the United States or any State thereof or (iii) change its chief executive office, principal place of business, or the location of its books and records or move any Collateral to or place any Collateral on any location that is not then listed on the Schedules , as updated from time to time pursuant to the terms of this Agreement, and/or establish (other than Collateral that is in transit or out for repair) any business location at any location that is not then listed on the Schedules.

(f) Credit Parties shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts that are otherwise not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the Revolving Loan Outstandings) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Credit Parties with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Credit Parties and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) All documentation reasonably requested by Agent for compliance with the Assignment of Claims Act has been executed and delivered by Borrowers to Agent in connection with each Account that is an obligation of a Governmental Account Debtor, and, with respect to Accounts for which the Account Debtor obligated thereon is any State of the United States, municipality, political subdivision or other governmental entity of any such State, all documentation reasonably requested by Agent for compliance with any statute in effect in such State that is substantially similar to the Assignment of Claims Act, as determined by Agent, has been executed and delivered by Borrowers to Agent in connection with each such Account.

(h) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Credit Parties shall deliver to Agent all tangible Chattel Paper and all Instruments and documents (other than any Excluded Perfection Assets) owned by any Credit Party and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Credit Parties shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper (other than Excluded Perfection Assets) owned by any Credit Party and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Credit Parties also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments (other than Excluded Perfection Assets). Credit Parties will mark conspicuously all such Chattel Paper and all such Instruments and documents (other than Excluded Perfection Assets) with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement

and the Security Documents. Credit Parties shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Credit Parties.

(ii) Credit Parties shall deliver to Agent all letters of credit (except to the extent constituting an Excluded Perfection Asset) on which any Credit Party is the beneficiary and which give rise to letter of credit rights owned by such Credit Party which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Except with respect to Excluded Perfection Assets, Credit Parties shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Credit Parties shall promptly advise Agent upon any Credit Party becoming aware that it has any interests in any commercial tort claim (except to the extent constituting an Excluded Perfection Asset), which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Credit Parties shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) Credit Parties shall obtain a landlord's agreement, mortgagee agreement, or bailee agreement, as applicable, from the lessor of each leased property, the mortgagee of owned property or the warehouseman, consignee, bailee at any business location, in each case, located in the United States and (a) which is a Credit Party's chief executive office or (b) where (i) any portion of the Collateral included in or proposed to be included in the Borrowing Base, or (ii) any portion of the Collateral with a value in excess of $1,000,000, is located, in each case, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. Credit Parties shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each of the locations specified in the preceding sentence. In no event shall the Credit Parties maintain tangible Collateral (other than Inventory with contract manufacturers and Inventory in transit in the Ordinary Course of Business) with a value in excess of $500,000 outside of the United States without Agent's prior consent.

(v) Credit Parties shall cause all material Equipment and other material tangible personal property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are reasonably necessary or desirable to such end. Upon request of Agent, Credit Parties shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible personal property (other than Excluded Perfection Assets) and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Credit Parties shall not permit any such tangible personal property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Credit Party hereby authorizes Agent to file without the signature of such Credit Party one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Credit Party as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired) in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Credit Party any continuations of or corrective amendments to any such financing statements, in any such case in

order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Credit Party also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) With respect to any Government Contract or Governmental Account Debtor for which Agent reasonably requests that a Credit Party comply with the provisions of the Assignment of Claims Act (or with respect to Accounts for which the Account Debtor obligated thereon is any State of the United States, municipality, political subdivision or other governmental entity of any such State, any statute in effect in such State that is substantially similar to the Assignment of Claims Act, as determined by Agent), Agent shall prepare and deliver to such Credit Party, with a copy to the Borrower Representative, (A) a properly completed notice of assignment (in form and substance reasonably satisfactory to Agent) and a properly completed instrument of assignment (in form and substance reasonably satisfactory to Agent; such instrument together with the notice, the "**Federal Assignment Documents**") with respect to such Government Contract, or (B) with respect to Accounts for which the Governmental Account Debtor obligated thereon is any State of the United States, municipality, political subdivision or other governmental entity of any such State, any notices of assignment, instrument of assignment or other document applicable in such State, as determined by Agent (collectively, the "**State Assignment Documents**"), in each case, in order that all moneys due or to become due under such Government Account shall be assigned to Agent, for the benefit of the Lenders. Promptly (and in any event within ten (10) Business Days) after receipt thereof, the applicable Credit Party shall execute and return to Agent such Federal Assignment Documents or State Assignment Documents, as applicable. Agent is authorized to file the Federal Assignment Documents or State Assignment Documents with the appropriate Governmental Authority at any time thereafter and shall simultaneously provide a copy of such filing to Borrower Representative and the applicable Credit Party.

(viii) Credit Parties shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Credit Party shall fail to pay when due any principal, interest, premium or fee under any Financing Document or any other amount payable under any Financing Document, or (ii) there shall occur any default in the performance of or compliance with any of the following sections or articles of this Agreement: Section 2.11, Section 4.1, Section 4.2(b), Section 4.4(c), Section 4.6, Section 4.9, Section 4.11, Section 4.15, Section 4.16, Section 4.17, Article 5, Article 6, or Section 7.4;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within thirty (30) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Responsible Officer of the Borrower or any other Credit Party of such default;

(c) any written representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or

other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of $1,000,000 or having an aggregate principal amount in excess of $2,000,000 to become or be declared due prior to its stated maturity, or (ii) without limiting the foregoing, the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring (or that would allow the holders thereof to require) the prepayment or mandatory redemption of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Credit Party shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law or any analogous procedure or step is taken in any other jurisdiction) now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Credit Party seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of forty-five (45) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Credit Party under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of $250,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that would reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $1,000,000;

(h) there is entered against any Credit Party or any Subsidiary thereof (i) one or more judgments or orders for the payment of money or fines or penalties issued by any Governmental Authority involving in the aggregate a liability (not fully covered or paid by insurance as to which the relevant insurance company has acknowledged coverage) of $3,000,000 or more, or (ii) one or more non-monetary final judgments that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case (i) or (ii), (A) enforcement proceedings are commenced by any creditor or any such Governmental Authority, as applicable, upon such judgment,

order, penalty or fine, as applicable, or (B) such judgment, order, penalty or fine, as applicable, shall not have been vacated, discharged, stayed or bonded, as applicable, pending appeal within 20 days from the entry or issuance thereof;

(i) except solely as a result of any action or inaction of Agent or any Lenders (provided that such action or inaction is not caused by a Credit Party's failure to comply with the terms of the Financing Documents), any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any other Financing Document and any applicable grace period under such Financing Document has expired;

(l) Viewray's equity securities fail to remain registered with the SEC and listed for trading on the Nasdaq Stock Market;

(m) the occurrence of any Material Adverse Effect;

(n) any Credit Party defaults under or breaches any Material Contract (after any applicable grace period contained therein), or a Material Contract shall be terminated by a third party or parties party thereto prior to the expiration thereof, or there is a loss of a material right of a Credit Party under any Material Contract to which it is a party;

(o) the occurrence of a Change in Control; or

(p) any of the Financing Documents shall for any reason fail to constitute the valid and binding agreement of any party thereto, or any Credit Party shall so assert, in each case, unless such Financing Document terminates pursuant to the terms and conditions thereof without any breach or default thereunder by any Credit Party thereto.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment and Term Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and/or Term Loan Commitment and the obligations of Agent, Term Loan Servicer and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment and/or Term Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party and Credit Parties will pay the same; *provided*, *however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Credit Party or any other act by Agent or the Lenders, the Revolving Loan Commitment and Term Loan Commitment and the obligations of Agent, Term Loan Servicer and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party and Credit Parties will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Credit Parties' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Credit Parties' original books and records, to obtain access to Credit Parties' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Credit Parties shall not resist or interfere with such action (if Credit Parties' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Credit Parties hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Credit Parties at Credit Parties' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Lender;

(iv) the right to notify postal authorities to change the address for delivery of Credit Parties' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Credit Party; and/or

(v) the right to enforce Credit Parties' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including documented out-of-pocket attorneys' fees, to Credit Parties, and (ii) the right, in the name of Agent or any designee of Agent or Credit Parties, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Credit Parties' compliance with applicable Laws. Credit Parties shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Credit Parties' affairs, all of which contacts Credit Parties hereby irrevocably authorize.

(b) Each Credit Party agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Credit Parties. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Credit Parties, which right is hereby waived and released. Each Credit Party covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral

and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Credit Parties will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Credit Parties shall be credited with the proceeds of the sale. Credit Parties shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Credit Party hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Credit Party and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Credit Party might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Upon the occurrence and during the continuance of an Event of Default, subject to any right of any third parties and/or any agreement between any Borrower and any third party to the extent not granted or entered into in contravention of the terms of this Agreement, Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, upon the occurrence and during the continuance of an Event of Default, without charge, Credit Parties' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Agent's exercise of its rights under this Article, Credit Parties' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit, subject to any rights of third party licensors or licensees, as applicable.

Section 10.4 Protective Payments. If any Credit Party fails to pay or perform any covenant or obligation under this Agreement or any other Financing Document, Agent may pay or perform such covenant or obligation, and all amounts so paid by Agent are Protective Advances and immediately due and payable, constituting principal and bearing interest at the then highest applicable rate for the Loans hereunder, and secured by the Collateral. No such payments or performance by Agent shall be construed as an agreement to make similar payments or performance in the future or constitute Agent's waiver of any Event of Default. Without limiting the foregoing, each Lender and Borrower hereby authorizes Agent, without the necessity of any notice or further consent from any Lender, from time to time prior to a Default, to make any Protective Advance with respect to any Collateral or the Financing Documents which may be necessary to protect the priority, validity or enforceability of any lien on, and security interest in, any Collateral and the instruments evidencing or securing the obligations of Borrower under the Financing Documents. Credit Parties agree to pay on demand all Protective Advances. The Lenders must reimburse Agent for any Protective Advances (in accordance with their Pro Rata Shares) to the extent not reimbursed by Credit Parties.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are two percent (2.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided, however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Credit Party at any time or from time to time, with reasonably prompt subsequent notice to such Credit Party (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Credit Party or any of its Subsidiaries (regardless of whether such balances are then due to such Credit Party or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Credit Party or any of its Subsidiaries, against and on account of any of the Obligations (other than contingent obligations for which not claim has been made); except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Credit Party agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each Credit Party irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent or Term Loan Servicer from or on behalf of such Borrower or any Guarantor of all or any part of the Obligations, and, as between Credit Parties on the one hand and Agent, Term Loan Servicer and Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received by Agent or Term Loan Servicer against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent.

(b) Following the occurrence and during the continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent and Term Loan Servicer, as applicable, shall apply any and all payments received by Agent or Term Loan Servicer (as applicable) in respect of the Obligations, and any and all proceeds of Collateral received by Agent or Term Loan Servicer, in such order as Agent or Term Loan Servicer, as applicable, may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent or Term Loan Servicer, as applicable, shall apply any and all payments received by Agent or Term Loan Servicer, as applicable, in respect of the Obligations, and any and all proceeds of Collateral received by Agent or Term Loan Servicer, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent or Term Loan Servicer with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to pay the Protective Advances and interest due or accrued in respect thereof, until paid in full *third*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *fourth*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fifth*, to the principal amount of the Obligations outstanding; and *sixth* to any other indebtedness or obligations of Credit Parties owing to Agent, Term Loan Servicer or any Lender under the Financing Documents. Any balance remaining shall be delivered to Credit Parties or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its Pro Rata Share of amounts available to be applied pursuant thereto for such category.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Credit Party waives: (i) presentment, demand and protest, and notice

of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Credit Party may in any way be liable, and hereby ratifies and confirms whatever Lenders may lawfully do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Credit Party acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Credit Party for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender and made in accordance with the terms of any Financing Document; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent, Term Loan Servicer or any Lender with respect to the payment or other provisions of the Financing Documents and made in accordance with the terms of any Financing Document, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Credit Party, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Credit Party and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Credit Party, Agent, Term Loan Servicer or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent, Term Loan Servicer or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent, Term Loan Servicer or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent, Term Loan Servicer or any Lender may at any time after such acquiescence require Credit Parties to comply with all such requirements. Any forbearance by Agent, Term Loan Servicer or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's, Term Loan Servicer's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's, Term Loan Servicer's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Credit Party agrees that if an Event of Default is continuing (i) Agent, Term Loan Servicer and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent, Term Loan Servicer or Lenders shall remain in full force and effect until Agent, Term Loan Servicer or Lenders have exhausted all remedies against the Collateral and any other properties owned by Credit Parties and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Credit Parties' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent, Term Loan Servicer or any Lender to resort to any part of the Collateral for the satisfaction of any of Credit Parties' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Credit Parties' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Credit Party defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Credit Party, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent, Term Loan Servicer or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Credit Party does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent, Term Loan Servicer and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent, Term Loan Servicer nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that any Credit Party makes any payment or Agent enforces its Liens or Agent, Term Loan Servicer, or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization.

(a) Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as

are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto.

(b) Each Lender hereby irrevocably appoints and authorizes Term Loan Servicer to take such actions as Term Loan Servicer on its behalf and to exercise such powers under the Financing Documents as are delegated to Term Loan Servicer by the terms thereof, together with all such powers as are reasonably incidental thereto.

(c) Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders and Term Loan Servicer.

(d) The provisions of this Article 11 are solely for the benefit of Agent, Term Loan Servicer and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent and Term Loan Servicer shall each act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party.

(e) Each of Agent and Term Loan Servicer may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Financing Document by or through any agents, servicers, trustees, investment managers, employees, attorney-in-fact or any other Person (including any Lender). Any such Person shall benefit from this Article 11 to the extent provided by Agent or Term Loan Servicer, as applicable.

Section 11.2 Agents and Affiliates. Agent and Term Loan Servicer shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and Term Loan Servicer and their respective Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent or Term Loan Servicer, as applicable, hereunder.

Section 11.3 Action by Agents. The duties of Agent and Term Loan Servicer shall be mechanical and administrative in nature. Neither Agent nor Term Loan Servicer shall have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent or Term Loan Servicer any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent and Term Loan Servicer may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. None of Agent, Term Loan Servicer nor any of their directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent and Term Loan Servicer shall each be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. None of Agent, Term Loan Servicer nor any of their directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the

validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Neither Agent nor Term Loan Servicer shall incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Neither Agent nor Term Loan Servicer shall be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such Erroneous Payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent and Term Loan Servicer (to the extent not reimbursed by Credit Parties) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's or Term Loan Servicer's, as applicable, gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent or Term Loan Servicer, as applicable, may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent or Term Loan Servicer, as applicable, hereunder or thereunder. If any indemnity furnished to Agent or Term Loan Servicer for any purpose shall, in the opinion of Agent or Term Loan Servicer (as applicable), be insufficient or become impaired, Agent or Term Loan Servicer, as applicable, may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent and Term Loan Servicer may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent or Term Loan Servicer is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent or Term Loan Servicer, as applicable, shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent or Term Loan Servicer as a result of Agent or Term Loan Servicer, as applicable, acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), neither Agent nor Term Loan Servicer shall have any obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent or Term Loan Servicer, as appliable, to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent, Term Loan Servicer or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent, Term Loan Servicer or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Revolving Loan Commitment and Term Loan Commitment and payment in full of all Obligations; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may

conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Credit Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent and/or Term Loan Servicer may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, or (ii) any Eligible Assignee to whom Agent or Term Loan Servicer, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) 50% or more of its Loan, in each case without the consent of the Lenders or Credit Parties. Following any such assignment, Agent or Term Loan Servicer, as appliable, shall endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. An assignment by Agent or Term Loan Servicer, as appliable, pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent or Term Loan Servicer to designate an assignee pursuant to subsection (a) above, Agent or Term Loan Servicer may at any time give notice of its resignation to the Lenders and Borrowers. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent or Term Loan Servicer, as applicable, which successor Agent or Term Loan Servicer shall be an Eligible Assignee. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent or Term Loan Servicer gives notice of its resignation, then the retiring Agent or Term Loan Servicer may on behalf of the Lenders, appoint a successor Agent or Term Loan Servicer; *provided*, *however*, that if Agent or Term Loan Servicer shall notify Borrowers and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent or Term Loan Servicer that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent or Term Loan Servicer shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or

through Agent or Term Loan Servicer, as applicable, shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent or Term Loan Servicer, as appliable, as provided for above in this paragraph.

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent or Term Loan Servicer, as applicable, pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent or Term Loan Servicer, and the retiring Agent or Term Loan Servicer shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent or Term Loan Servicer shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation or retiring Term Loan Servicer's resignation (as applicable) hereunder and under the other Financing Documents, the provisions of this Article 11 and Section 11.12 shall continue in effect for the benefit of such retiring Agent or Term Loan Servicer and its sub-agents in respect of any actions taken or omitted to be taken by any of them while the retiring Agent or Term Loan Servicer was acting or was continuing to act as Agent or Term Loan Servicer, as applicable.

Section 11.13 Payment and Sharing of Payment.

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Revolving Loan Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage

interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided, however,* that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender's commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If Agent elects to advance the initial Loans to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender's Pro Rata Share of such Loans unless Agent receives such Lender's Pro Rata Share of such Loans before 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Revolving Loan Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) Term Loan Payments. Payments of principal, interest and fees in respect of the Term Loans will be settled on the date of receipt if received by Term Loan Servicer on the last Business Day of a month or on the Business Day immediately following the date of receipt if received on any day other than the last Business Day of a month; *provided*, *however,* that, in the case such Lender is a Defaulted Lender, Term Loan Servicer shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Credit Party.

(c) Return of Payments.

(i) If Agent or Term Loan Servicer pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent or Term Loan Servicer, as applicable, from a Credit Party and such related payment is not received by Agent, then Agent or Term Loan Servicer, as applicable, will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent or Term Loan Servicer determines at any time that any amount received by Agent or Term Loan Servicer, as applicable, under this Agreement must be returned to any Credit Party or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent or Term Loan Servicer, as applicable, will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent or Term Loan Servicer, as applicable, on demand any portion of such amount that Agent or Term Loan Servicer, as applicable, has distributed to such Lender, together with interest at such rate, if any, as Agent or Term Loan Servicer, as applicable, is required to pay to any Credit Party or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent nor Term Loan Servicer shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however,* that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Credit Party agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Credit Parties in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Credit Parties' expense. Agent is further authorized by the Credit Parties and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by the Credit Parties, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Credit Party hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any co-lead arranger, bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent and Term Loan Servicer (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the

other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided*, *however*, the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent; and/or

(iii) if the rights or duties of Term Loan Servicer are affected thereby, by Term Loan Servicer

provided, *however*, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or the other Financing Documents or postpone the date of termination of any commitment of any Lender hereunder; (C) change the definition of the term Required Lenders or the percentage of Lenders which shall be required for Lenders to take any action hereunder; (D) (I) release all or substantially all of the Collateral, (II) authorize any Credit Party to sell or otherwise dispose of all or substantially all of the Collateral, (III) release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, (IV) consent to a transfer of any Material Intangible Asset, or (V) contractually subordinate the Obligations (including any guarantees thereof) or Agent's Lien on all or substantially all of the Collateral, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Credit Party of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Term Loan Commitment, Term Loan Tranche 1 Commitments, Term Loan Tranche 2 Commitments, Revolving Loan Commitment Amount, Term Loan Commitment Amount, Term Loan Tranche 1 Commitment Amount, Term Loan Tranche 2 Commitment Amount, Revolving Loan Commitment Percentage, Term Loan Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder or any other provision of the Financing Documents requiring *pro rata* treatment of the Lenders. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment,

waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Loan together with all related obligations of such Lender hereunder. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however,* that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Credit Parties, Agent and Term Loan Servicer shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided, however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 13.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest error, and Borrower, Agent, Term Loan Servicer and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower, Term Loan Servicer and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower, Agent and Term Loan Servicer at any reasonable time upon reasonable prior notice to the applicable Lender; provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Financing Document) to any Person (including Borrower) except

to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) and Term Loan Servicer (in its capacity as Term Loan Servicer) shall have no responsibility for maintaining a Participant Register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided*, *however,* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Credit Party, Agent or Term Loan Servicer, sell to one or more Persons (other than any Credit Party or any Credit Party's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Credit Parties, Agent and Term Loan Servicer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Credit Party shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Credit Party agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(h), which demand shall not have been revoked, (ii) any Credit Party is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a) through (h), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**")

for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided*, *however*, that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) through (h), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Credit Parties, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 13.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Required Lenders have not waived the conditions to the funding of Loans set forth in Section 7.2 or Section 2.1, any Lender may deliver a notice to Agent stating that such Lender shall cease making Revolving Loans or not fund any tranche of the Term Loan, as applicable, due to the non-satisfaction of one or more conditions to funding Loans set forth in Section 7.2 or Section 2.1, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loan Outstanding in excess of Zero Dollars ($0) or Term Loans outstanding in excess of Zero Dollars ($0); *provided*, *however,* that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Lender under clauses (a) and (b) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount and Term Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount and Term Loan Commitment Amount of each Non-Funding Lender shall be deemed to be Zero Dollars ($0).

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate Revolving Loan Outstandings of all Non-Funding Lenders as of such date.

(d) The Term Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Term Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate principal amount outstanding under the Term Loans of all Non-Funding Lenders as of such date.

(e) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party.

(f) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans or Term Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans or Term Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans or Term Loans, as applicable.

ARTICLE 12 – GUARANTY

Section 12.1 Guaranty. Each Guarantor hereby unconditionally guarantees, as a primary obligor and not merely as a surety, jointly and severally with each other Guarantor when and as due, whether at maturity, by acceleration, by notice of prepayment or otherwise, the due and punctual performance of all of the Obligations, including payment in full of the principal, accrued but unpaid interest and all other amounts due and owing to the Agent, Term Loan Servicer and Lenders under the Loans and (b) indemnifies each Lender immediately on demand against any cost, loss or liability suffered by such Lender if any obligations guaranteed by it are or become unenforceable, invalid, voided, avoid or illegal, the amount of which such cost, loss or liability shall be equal to the amount which such Lender would otherwise be entitled to recover. Each payment made by any Guarantor pursuant to this Article 12 shall be made in lawful money of the United States in immediately available funds.

Section 12.2 Payment of Amounts Owed. The Guarantee hereunder is an absolute, unconditional and continuing guarantee of the full and punctual payment and performance of all of the Obligations and not of their collectability only and is in no way conditioned upon any requirement that the Agent, Term Loan Servicer or any Lender first attempt to collect any of the Obligations from any Borrower or resort to any collateral security or other means of obtaining payment. In the event of any default by Borrowers in the payment of the Obligations, after the expiration of any applicable cure or grace period, each Guarantor agrees, on demand by Agent (which demand may be made concurrently with notice to Borrowers that the Borrowers are in default of their obligations), to pay the Obligations, regardless of any defense, right of set-off or recoupment or claims which any Borrower or Guarantor may have against Agent, Term Loan Servicer or Lenders or the holder of the Notes. All of the remedies set forth in this Agreement, in any other Financing Document or at law or equity shall be equally available to Agent, Term Loan Servicer and Lenders, and the choice by Agent, Term Loan Servicer or Lenders of one such alternative over another shall not be subject to question or challenge by any Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, recoupment or failure to mitigate damages in any action, proceeding, or counteraction by Agent, Term Loan Servicer or Lenders to recover or seeking any other remedy under this Guarantee, nor shall such choice preclude Agent, Term Loan Servicer or Lenders from subsequently electing to exercise a different remedy.

Section 12.3 Certain Waivers by Guarantor. To the fullest extent permitted by law, each Guarantor does hereby:

(a) waive notice of acceptance of this Agreement by Agent, Term Loan Servicer and Lenders and any and all notices and demands of every kind which may be required to be given by any statute, rule or law;

(b) agree to refrain from asserting, until after repayment in full of the Obligations, any defense, right of set-off, right of recoupment or other claim which such Guarantor may have against any Borrower;

(c) waive any defense, right of set-off, right of recoupment or other claim which such Guarantor may have against Agent, Term Loan Servicer, Lenders or the holder of the Notes;

(d) waive any and all rights such Guarantor may have under any anti-deficiency statute or other similar protections;

(e) waive all rights at law or in equity to seek subrogation, contribution, indemnification or any other form of reimbursement or repayment from any Borrower, any other Guarantor or any other person or entity now or hereafter primarily or secondarily liable for any of the Obligations until the Obligations have been paid in full;

(f) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge such Guarantor with liability;

(g) waive the benefit of all appraisement, valuation, marshalling, forbearance, stay, extension, redemption, homestead, exemption and moratorium laws now or hereafter in effect;

(h) waive any defense based on the incapacity, lack of authority, death or disability of any other person or entity or the failure of Agent, Term Loan Servicer or Lenders to file or enforce a claim against the estate of any other person or entity in any administrative, bankruptcy or other proceeding;

(i) waive any defense based on an election of remedies by Agent, Term Loan Servicer or Lenders, whether or not such election may affect in any way the recourse, subrogation or other rights of such Guarantor against any Borrower, any other Guarantor or any other person in connection with the Obligations;

(j) waive any defense based on the failure of the Agent or Lenders to (i) provide notice to such Guarantor of a sale or other disposition of any of the security for any of the Obligations, or (ii) conduct such a sale or disposition in a commercially reasonable manner;

(k) waive any defense based on the negligence of Agent, Term Loan Servicer or Lenders in administering this Agreement or the other Financing Documents (including, but not limited to, the failure to perfect any security interest in any Collateral), or taking or failing to take any action in connection therewith, *provided, however*, that such waiver shall not apply to the gross negligence or willful misconduct of the Agent, Term Loan Servicer or Lenders, as determined by the final, non-appealable decision of a court having proper jurisdiction;

(l) waive the defense of expiration of any statute of limitations affecting the liability of such Guarantor hereunder or the enforcement hereof;

(m) waive any right to file any Claim (as defined below) as part of, and any right to request consolidation of any action or proceeding relating to a Claim with, any action or proceeding filed or maintained by Agent, Term Loan Servicer or Lenders to collect any Obligations of such Guarantor to Agent, Term Loan Servicer or Lenders hereunder or to exercise any rights or remedies available to Agent, Term Loan Servicer or Lenders under the Financing Documents, at law, in equity or otherwise;

(n) agree that neither Agent, Term Loan Servicer nor Lenders shall have any obligation to obtain, perfect or retain a security interest in any property to secure any of the Obligations (including any mortgage or security interest contemplated by the Financing Documents), or to protect or insure any such property;

(o) waive any obligation Agent, Term Loan Servicer or Lenders may have to disclose to such Guarantor any facts the Agent, Term Loan Servicer or Lenders now or hereafter may

know or have reasonably available to it regarding the Borrowers or Borrowers' financial condition, whether or not the Agent, Term Loan Servicer or Lenders have a reasonable opportunity to communicate such facts or have reason to believe that any such facts are unknown to such Guarantor or materially increase the risk to such Guarantor beyond the risk such Guarantor intends to assume hereunder;

(p) agree that neither Agent, Term Loan Servicer nor Lenders shall be liable in any way for any decrease in the value or marketability of any property securing any of the Obligations which may result from any action or omission of the Agent, Term Loan Servicer or Lenders in enforcing any part of this Agreement;

(q) waive any defense based on any invalidity, irregularity or unenforceability, in whole or in part, of any one or more of the Financing Documents;

(r) waive any defense based on any change in the composition of Borrowers, and

(s) waive any defense based on any representations and warranties made by such Guarantor herein or by any Borrower herein or in any of the Financing Documents.

For purposes of this section, the term "**Claim**" shall mean any claim, action or cause of action, defense, counterclaim, set-off or right of recoupment of any kind or nature against the Agent, Term Loan Servicer or Lenders, its officers, directors, employees, agents, members, actuaries, accountants, trustees or attorneys, or any affiliate of the Agent, Term Loan Servicer or Lenders in connection with the making, closing, administration, collection or enforcement by the Agent, Term Loan Servicer or Lenders of the Obligations.

Section 12.4 Guarantor's Obligations Not Affected by Modifications of Financing Documents. Each Guarantor further agrees that such Guarantor's liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of Guarantor for the time for payment of interest or principal or by any forbearance or delay in collecting interest or principal hereunder, or by any waiver by Agent or Lenders under this Agreement or any other Financing Documents, or by Agent's, Term Loan Servicer's or Lenders' failure or election not to pursue any other remedies it may have against any Borrower or Guarantor, or by any change or modification in the Notes, this Agreement or any other Financing Document, or by the acceptance by Agent or Lenders of any additional security or any increase, substitution or change therein, or by the release by Agent or Lenders of any security or any withdrawal thereof or decrease therein, or by the application of payments received from any source to the payment of any obligation other than the Obligations even though Agent, Term Loan Servicer or Lenders might lawfully have elected to apply such payments to any part or all of the Obligations, it being the intent hereof that, subject to Agent's, Term Loan Servicer's or Lenders' compliance with the terms of this Article 12 and the Financing Documents, each Guarantor shall remain liable for the payment of the Obligations, until the Obligations have been paid in full, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Each Guarantor further understands and agrees that Agent or Lenders may at any time enter into agreements with Borrowers to amend, modify and/or increase the principal amount of, interest rate applicable to or other economic and non-economic terms of this Agreement or the other Financing Documents, and may waive or release any provision or provisions of this Agreement or the other Financing Documents, and, with reference to such instruments, may make and enter into any such agreement or agreements as Agent, Lenders and Borrowers may deem proper and desirable, without in any manner impairing this Guarantee or any of Agent's, Term Loan Servicer's or Lenders' rights hereunder or each Guarantor's obligations hereunder, and each Guarantor's obligations hereunder shall apply to the this Agreement and other Financing Documents as so amended, modified, extended, renewed or increased.

Section 12.5 Reinstatement; Deficiency. This guaranty shall continue to be effective or be reinstated (as the case may be) if at any time payment of all or any part of any sum payable pursuant to this Agreement or any other Financing Document is rescinded or otherwise required to be returned by

Agent, Term Loan Servicer or Lenders upon the insolvency, bankruptcy, dissolution, liquidation, or reorganization of any Borrower, or upon or as a result of the appointment of a receiver, intervenor, custodian or conservator of or trustee or similar officer for, any Borrower or any substantial part of its property, or otherwise, all as though such payment to Agent, Term Loan Servicer or Lenders had not been made, regardless of whether Agent, Term Loan Servicer or Lenders contested the order requiring the return of such payment. In the event of the foreclosure of the Financing Documents and of a deficiency, each Guarantor hereby promises and agrees forthwith to pay the amount of such deficiency notwithstanding the fact that recovery of said deficiency against Borrowers would not be allowed by applicable law; however, the foregoing shall not be deemed to require that Agent, Term Loan Servicer or Lenders institute foreclosure proceedings or otherwise resort to or exhaust any other collateral or security prior to or concurrently with enforcing this guaranty.

Section 12.6 Subordination of Borrowers' Obligations to Guarantors; Claims in Bankruptcy.

(a) Any indebtedness of any Borrower to any Guarantor (including, but not limited to, any right of such Guarantor to a return of any capital contributed to a Borrower), whether now or hereafter existing, is hereby subordinated to the payment of the Obligations. Each Guarantor agrees that, until the Obligations have been paid in full, such Guarantor will not seek, accept, or retain for its own account, any payment from any Borrower on account of such subordinated debt. Any payments to any Guarantor on account of such subordinated debt shall be collected and received by such Guarantor in trust for Agent and Lenders and shall be immediately paid over to Agent, for the benefit of Agent and Lenders, on account of the Obligations without impairing or releasing the obligations of such Guarantor hereunder.

(b) Each Guarantor shall promptly file in any bankruptcy or other proceeding in which the filing of claims is required by law, all claims and proofs of claims that such Guarantor may have against any Borrower or any other Guarantor and does hereby assign to Agent or its nominee (and will, upon request of Agent, reconfirm in writing the assignment to Agent or its nominee of) all rights of such Guarantor under such claims. If such Guarantor does not file any such claim, Agent, as attorney-in-fact for such Guarantor, is hereby irrevocably authorized to do so in the name of such Guarantor, or in Agent's discretion, to assign the claim to a designee and cause proof of claim to be filed in the name of Agent's designee. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Agent, for the benefit of Agent and Lenders, the full amount thereof and, to the full extent necessary for that purpose, each Guarantor hereby assigns to the Lenders all of such Guarantor's rights to any such payments or distributions to which such Guarantor would otherwise be entitled, such assignment being a present and irrevocable assignment of all such rights.

Section 12.7 Maximum Liability. The provisions of this Article 12 are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Article 12 would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Article 12, then, notwithstanding any other provision of this Article 12 to the contrary, the amount of such liability shall, without any further action by the Guarantors or the Agent, Term Loan Servicer or any Lender, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "**Maximum Liability**"). This Section 12.7 with respect to the Maximum Liability of each Guarantor is intended solely to preserve the rights of the Agent, Term Loan Servicer and the Lenders to the maximum extent not subject to avoidance under applicable law, and no Guarantor nor any other Person shall have any right or claim under this Section 12.7 with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Obligations may at any time and from time to time exceed the Maximum Liability of each Guarantor without impairing this guaranty or affecting the rights and remedies of the Agent, Term Loan Servicer or the Lenders hereunder, provided that, nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond its Maximum Liability.

Section 12.8 Guarantor's Investigation. Each Guarantor acknowledges receipt of a copy of each of this Agreement and the other Financing Documents. Each Guarantor has made an independent investigation of the other Credit Parties and of the financial condition of the other Credit Parties. Neither Agent, Term Loan Servicer nor any Lender has made and neither Agent, Term Loan Servicer nor any Lender does make any representations or warranties as to the income, expense, operation, finances or any other matter or thing affecting any Credit Party nor has Agent, Term Loan Servicer or any Lender made any representations or warranties as to the amount or nature of the Obligations of any Credit Party to which this Article 12 applies as specifically herein set forth, nor has Agent, Term Loan Servicer or any Lender or any officer, agent or employee of Agent, Term Loan Servicer or any Lender or any representative thereof, made any other oral representations, agreements or commitments of any kind or nature, and each Guarantor hereby expressly acknowledges that no such representations or warranties have been made and such Guarantor expressly disclaims reliance on any such representations or warranties.

Section 12.9 Termination. The provisions of this Article 12 shall remain in effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations for which no claim has been made and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid and satisfied in full.

Section 12.10 Representative. Each Guarantor hereby designates Borrower Representative and its representatives and agents on its behalf for the purpose of giving and receiving all notices and other consents hereunder or under any other Financing Document and taking all other actions on behalf of such Guarantor under the Financing Documents. Borrower Representative hereby accepts such appointment.

Section 12.11 Guarantor Acknowledgement. Without limiting the generality of the foregoing, each Guarantor, by its acceptance of this Guaranty, hereby confirms that it is a Subsidiary of a Borrower and each Guarantor further confirms that it will materially benefit from the Loans made hereunder and the parties hereto intend that this Guaranty not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law (as defined below), the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, state or foreign law to the extent applicable to this Guaranty. In furtherance of that intention, the liabilities of each Guarantor under this Guaranty (the "**Liabilities**") shall be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Person with respect to the Liabilities, result in the Liabilities of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance. For purposes hereof, "**Bankruptcy Law**" means the United States Bankruptcy Code, or any similar federal, state or foreign law for the relief of debtors. This paragraph with respect to the maximum liability of each Guarantor is intended solely to preserve the rights of the holders, to the maximum extent not subject to avoidance under applicable law, and neither a Guarantor nor any other Person shall have any right or claim under this paragraph with respect to such maximum liability, except to the extent necessary so that the obligations of a Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Obligations guaranteed hereunder may at any time and from time to time exceed the maximum liability of such Guarantor without impairing this Guaranty or affecting the rights and remedies of the holders hereunder; provided that nothing in this sentence shall be construed to increase such Guarantor's obligations hereunder beyond its maximum liability.

ARTICLE 13 - MISCELLANEOUS

Section 13.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents. The provisions of Section 2.10 and Articles 11 and 13 shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 13.2 No Waivers. No failure or delay by Agent, Term Loan Servicer or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 13.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, email or similar writing) and shall be given to such party at its address or e-mail address set forth below or on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an Assignment Agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; *provided*, *however*, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 13.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by electronic means, in accordance with the provisions of Section 13.3(b) and (c), or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 13.3(a).

If to any Credit Party:

Viewray, as Borrower Representative
1099 18th Street, Ste 3000
Denver, CO 80202
Attn: Zachary W. Stassen, Chief Financial Officer
Email: zstassen@viewray.com

With a copy to:

Viewray, as Borrower Representative
1099 18th Street, Ste 3000
Denver, CO 80202
Attn: Robert S. McCormack, Chief Legal Officer
Email: rmccormack@viewray.com

If to Agent or to MCF (or any of its Affiliates or Approved Funds) as a Lender:

MidCap Funding IV Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 300
Bethesda, MD 20814
Attn: Account Manager for Viewray transaction
Email: notices@midcapfinancial.com

With a copy to:

MidCap Funding IV Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 300
Bethesda, MD 20814

Attn: Legal
Email: legalnotices@midcapfinancial.com

If to Term Loan Servicer:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 300
Bethesda, MD 20814
Attn: Account Manager for Viewray transaction
Email: notices@midcapfinancial.com

With a copy to:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 300
Bethesda, MD 20814
Attn: Legal
Email: legalnotices@midcapfinancial.com

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, *provided*, *however*, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent, Term Loan Servicer or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, *provided*, *however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 13.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 13.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 13.6 Confidentiality.

(a) Agent, Term Loan Servicer and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Credit Parties and obtained by Agent, Term Loan Servicer or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries,

Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent, Term Loan Servicer or a Lender, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by applicable Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, (v) as Agent, Term Loan Servicer or any Lender considers appropriate in exercising remedies under the Financing Documents or at any time an Event of Default exists hereunder, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer (including any Term Loan Servicer), noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" means (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided, however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent, Term Loan Servicer and Lenders under this Section 13.6 shall supersede and replace the obligations of Agent, Term Loan Servicer and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent, Term Loan Servicer or any Lender prior to the date hereof.

Section 13.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 13.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW).

(b) EACH PARTY HERETO HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTY BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND

SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

Section 13.9 **WAIVER OF JURY TRIAL**. EACH CREDIT PARTY, AGENT, TERM LOAN SERVICER, AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH CREDIT PARTY, AGENT, TERM LOAN SERVICER, AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH CREDIT PARTY, AGENT, TERM LOAN SERVICER AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 13.10 Publication; Advertisement.

(a) Publication. No Credit Party will directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 13.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. In furtherance of the foregoing, the words "execution", "signed", "signature", "delivery" and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. As used herein, "**Electronic Signature**" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or other record. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and

supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 13.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 13.13 Lender Approvals. Unless expressly provided herein to the contrary (including any approvals, consents or waiver that may be granted or withheld in Agent's Permitted Discretion), any approval, consent, waiver or satisfaction of Agent, Term Loan Servicer or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent, Term Loan Servicer and Lenders in their sole and absolute discretion and credit judgment.

Section 13.14 Expenses; Indemnity

(a) Except with respect to Indemnified Taxes, Other Taxes and Excluded Taxes, which shall be governed exclusively by Section 2.8, Credit Parties hereby agree to promptly pay (i) all reasonable costs and expenses of Agent, Term Loan Servicer and SVB (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent, subject to the limitations set forth herein) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent or Term Loan Servicer of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all reasonable costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents other than disputes solely among Lenders and/or Agent (other than any claims against such person in its capacity or in fulfilling its role as Agent, arranger or any similar role hereunder) to the extent such disputes do not arise from any act or omission of any Credit Party or of any Affiliate of a Credit Party; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent and/or Term Loan Servicer in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all reasonable costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document, other than disputes solely among Lenders and/or Agent and/or Term Loan Servicer (other than any claims against such person in its capacity or in fulfilling its role as Agent, Term Loan Servicer, arranger or any similar role hereunder) to the extent such disputes do not arise from any act or omission of any Credit Party or of any Affiliate of a Credit Party, and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent, Term Loan Servicer or Lenders are a party thereto.

(b) Each Credit Party hereby agrees to indemnify, pay and hold harmless Agent, Term Loan Servicer and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent, Term Loan Servicer and Lenders (collectively called the "**Indemnitees**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the documented out-of-pocket fees and

disbursements of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Financing Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by a Credit Party, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of a Credit Party or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Credit Parties shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Credit Parties shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such indemnified liabilities incurred by the Indemnitees or any of them. This Section 13.14(b) shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, claims etc. arising from any non-Tax claim.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Credit Parties under this Section 13.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE CREDIT PARTIES OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 13.15 RESERVED.

Section 13.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 13.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Credit Parties and Agent, Term Loan Servicer and each Lender and their respective successors and permitted assigns.

Section 13.18 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender), Term Loan Servicer (for itself and not on behalf of any Lender), and each Lender hereby notifies Credit Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Credit Parties, which information includes the name and address of the Credit Parties and such other information that will allow Agent, Term Loan Servicer, or such Lender, as applicable, to identify Credit Parties in accordance with the USA PATRIOT Act.

Section 13.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Financing Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Financing Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Financing Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 13.20 Section 13.21 [Reserved].

Section 13.22 Erroneous Payments.

(a) Each Lender and any other party hereto hereby severally agrees that if (i) the Agent or Term Loan Servicer notifies (which such notice shall be conclusive absent manifest error) such Lender (or the Lender which is an Affiliate of a Lender) or any other Person that has received funds from the Agent, the Term Loan Servicer or any of their Affiliates, either for its own account or on behalf of a Lender (each such recipient, a "**Payment Recipient**") that the Agent or Term Loan Servicer, as applicable, has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Agent or Term Loan Servicer (or any of their Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Agent or the Term Loan Servicer (or any of their Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Agent or Term Loan Servicer (or any of their Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) (any such amounts specified in clauses (i) or (ii) of this Section 13.22(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "**Erroneous Payment**"). Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the

Agent or Term Loan Servicer, as applicable, for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Agent and Term Loan Servicer in writing of such occurrence.

(c) If Agent demands the return of such Erroneous Payment (or a portion thereof), in the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Agent or Term Loan Servicer, as applicable, and shall be segregated by the Payment Recipient and held in trust for the benefit of the Agent or Term Loan Servicer, as applicable, and upon demand from the Agent or Term Loan Servicer, as applicable, such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than two Business Days thereafter, return to the Agent or Term Loan Servicer, as applicable, the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Agent or Term Loan Servicer, as applicable, at the greater of the Federal Funds Rate and a rate determined by the Agent or Term Loan Servicer, as applicable, in accordance with banking industry rules on interbank compensation from time to time in effect.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Agent or Term Loan Servicer for any reason, after demand therefor by the Agent or Term Loan Servicer, as applicable, in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an "**Erroneous Payment Return Deficiency**"), then at the sole discretion of the Agent or Term Loan Servicer, as applicable, and upon the Agent's or Term Loan Servicer's, as applicable, written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Term Loan Commitment Amount or Revolving Loan Commitment Amount, as applicable) with respect to which such Erroneous Payment was made (the "**Erroneous Payment Impacted Loans**") to the Agent or Term Loan Servicer or, at the option of the Agent or Term Loan Servicer (as applicable), the Agent's or Term Loan Servicer's applicable lending affiliate (such assignee, the "**Agent Assignee**") in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Agent or Term Loan Servicer, as applicable, may specify) (such assignment of the Loans (but not its Term Loan Commitment Amount or Revolving Loan Commitment Amount, as applicable) of the Erroneous Payment Impacted Loans, the "**Erroneous Payment Deficiency Assignment**") plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Agent Assignee as the assignee of such Erroneous Payment Deficiency Assignment. Without limitation of its rights hereunder, following the effectiveness of the Erroneous Payment Deficiency Assignment, the Agent or Term Loan Servicer, as applicable, may make a cashless reassignment to the applicable assigning Lender of any Erroneous Payment Deficiency Assignment at any time by written notice to the applicable assigning Lender and upon such reassignment all of the Loans assigned pursuant to such Erroneous Payment Deficiency Assignment shall be reassigned to such Lender without any requirement for payment or other consideration. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 11.17 and (3) the Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Agent or Term Loan Servicer, as applicable (1) shall be subrogated to all the rights of such Payment Recipient and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Financing Document, or

otherwise payable or distributable by the Agent or Term Loan Servicer, as applicable, to such Payment Recipient from any source, against any amount due to the Agent or Term Loan Servicer, as applicable, under this Section 13.22 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrower or any other Credit Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Agent or the Term Loan Servicer, as applicable, from the Borrower or any other Credit Party for the purpose of making for a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 13.22 shall survive the resignation or replacement of the Agent or Term Loan Servicer, as applicable, or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Term Loan Commitments, the Revolving Loan Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Financing Document.

(g) The provisions of this Section 13.22 to the contrary notwithstanding, (i) nothing in this Section 13.22 will constitute a waiver or release of any claim of any party hereunder arising from any Payment Recipient's receipt of an Erroneous Payment and (ii) there will only be deemed to be a recovery of the Erroneous Payment to the extent that Agent or Term Loan Servicer, as applicable, has received payment from the Payment Recipient in immediately available funds the Erroneous Payment Return Deficiency, whether directly from the Payment Recipient, as a result of the exercise by Agent or Term Loan Servicer, as applicable, of its rights of subrogation or set off as set forth above in clause (e) or as a result of the receipt by Agent Assignee of a payment of the outstanding principal balance of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment, but excluding any other amounts in respect thereof (it being agreed that any payments of interest, fees, expenses or other amounts (other than principal) received by Agent Assignee in respect of the Loans assigned to Agent Assignee pursuant to an Erroneous Payment Deficiency Assignment shall be the sole property of the Agent Assignee and shall not constitute a recovery of the Erroneous Payment).

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed as of the day and year first above mentioned.

BORROWERS:

VIEWRAY, INC.

By:____
Name: __
Title: __

VIEWRAY TECHNOLOGIES, INC.

By:____
Name: __
Title: __

AGENT:

MIDCAP FUNDING IV TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

Address:
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: Account Manager for Viewray transaction
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: General Counsel
E-mail: legalnotices@midcapfinancial.com

Revolving Loan Payment Account Designation:

Wells Fargo Bank, N.A. (McLean, VA)
ABA #: 121-000-248
Account Name: MidCap Funding IV Trust – Collections
Account #: 2000036282803
Attention: Viewray Facility

TERM LOAN SERVICER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

Address:
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: Account Manager for Viewray transaction
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: General Counsel
E-mail: legalnotices@midcapfinancial.com

Term Loan Payment Account Designation:

SunTrust Bank, N.A.
ABA #: 061000104
Account Name: MidCap Financial Trust – Collections
Account #: 1000113400435
Attention: Viewray Facility

SILICON VALLEY BANK

By:____
Name:__
Title:__

Address:

LENDERS:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

Address:
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: Account Manager for Viewray transaction
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 300
Bethesda, Maryland 20814
Attn: General Counsel
E-mail: legalnotices@midcapfinancial.com

LENDERS:

MIDCAP FUNDING H TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

MIDCAP FUNDING XIII TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____
Name: Maurice Amsellem
Title: Authorized Signatory

MIDCAP FINANCIAL INVESTMENT CORPORATION

By: _____
Name: Kristin Hester
Title: Chief Legal Officer

LENDERS:

ANNEXES

Annex A Commitment Annex

Annex A to Credit Agreement (Commitment Annex)

Lender	Term Loan Tranche 1 Commitment Amount	Term Loan Tranche 1 Commitment Percentage	Term Loan Tranche 2 Commitment Amount	Term Loan Tranche 2 Commitment Percentage
MidCap Financial Trust	$0.00	0.00%	$8,333,333.33	33.33%
MidCap Funding H Trust	$5,000,000.00	6.67%	$0.00	0.00%
MidCap Funding XIII Trust	$20,000,000.00	26.67%	$0.00	0.00%
MidCap Financial Investment Corporation	$12,500,000.00	16.67%	$4,166,666.67	16.67%
Silicon Valley Bank	$37,500,000.00	50.00%	$12,500,000.00	50.00%
TOTALS	**$75,000,000.00**	**100%**	**$25,000,000.00**	**100%**

Lender	Revolving Loan Commitment Amount	Revolving Loan Commitment Percentage
MidCap Financial Trust	$6,750,000.00	45.00%
MidCap Financial Investment Corporation	$750,000.00	5.00%
Silicon Valley Bank	$7,500,000.00	50.00%
TOTALS	**$15,000,000.00**	**100%**

Amendment No. 2

Amendment Date:	February 27, 2023
Parties:	ViewRay, Inc. Scott Drake
Original Agreement:	Employment Agreement dated July 22, 2018, as previously amended December 20, 2018

The below signatories are parties to the Original Agreement. The parties hereby agree to amend the Original Agreement as follows:

1. Section 6.2 of the Original Agreement is hereby stricken and replaced in its entirety with the following clause:

> *6.2. Without Cause or With Good Reason. If the Company terminates the Executive's employment without Cause (as defined below), or the Executive resigns for Good Reason (as defined below), then, provided that the Executive executes and delivers, and does not revoke, a general release of claims in a customary form mutually satisfactory to the Company and Executive (the "Release") (i) the Company shall pay an amount equal to two times the sum of (x) Base Salary, and (y) the target Performance Bonus, both as determined and in effect at the date of the Executive's termination, payable in a single lump sum within ten (10) business days after the expiration of the "Revocation Period" (defined as the seven (7) day period following execution of the Release and (ii) the Company will pay the Executive an amount equal to twelve multiplied by the difference between the monthly COBRA premium cost and the monthly contribution previously paid by the Executive as an active employee for the same coverage prior to such termination or resignation. In addition, the award agreements issued in connection with the Inducement Equity Grant and any award agreements governing any other equity awards issued to the Executive after the date hereof shall provide that, if the Company terminates the Executive's employment without Cause, or the Executive resigns for Good Reason, then such equity awards that would otherwise (absent the termination) have vested during the twenty-four (24) month period following the Executive's termination shall accelerate and become fully-vested as of the date of the Executive's termination. Executive's equity award agreements will also provide that Executive shall have 12 months from the date of any such termination to exercise any remaining stock options held by Executive. Any other unvested equity awards will be forfeited upon any termination of employment. In no event shall the Executive or the Executive's estate or beneficiaries be entitled to any of the payments or benefits set forth in this Section 6.2 upon termination of the Executive's employment by reason of his disability or death other than the right to a pro rata Performance Bonus based on the number of months Executive was employed in the calendar year prior to such death or disability.*

2. This Amendment is effective as of the date set forth above. This Amendment may be executed in multiple counterparts all of which together will constitute one instrument. This Amendment is made a part of the Original Agreement. Except as specifically amended by this Amendment, the Original Agreement will remain in full force and effect without addition, deletion or change.

ViewRay, Inc.

By: _____
(signature)

Printed Name:_____

Title:_____

Executive

By: _____
(signature)

Printed Name: Scott Drake

Title: President, CEO

GENERAL RELEASE OF CLAIMS

This General Release of Claims ("Release"), dated as of January 6, 2023, is entered into between ViewRay, Inc., a Delaware Corporation., together with its existing and future subsidiaries and controlled affiliates ("ViewRay"), and Zachary Stassen ("Employee") (collectively, the "Parties"). Unless otherwise defined herein, any capitalized terms used in this Release shall have the meaning set forth in the Confidential Severance Agreement.

The Parties agree as follows:

1. **Separation of Employment**.

   a. Employee hereby acknowledges that effective as of January 6, 2023, Employee shall no longer serve as Chief Financial Officer with ViewRay.

   b. During the period beginning January 6, 2023 through March 31, 2023 (the "Transition Period"), Employee shall remain employed on a full-time basis by ViewRay, at an annual salary of $183,872.00 Employee further acknowledges that Employee's employment with ViewRay shall be terminated at the expiration of the Transition Period, i.e., March 31, 2023 (the "Separation Date").

   c. In accordance with the Confidential Severance Agreement between Employee and ViewRay, dated May 18, 2020, (the "Severance Agreement") ViewRay agrees:

      i. To make a lump sum severance payment to Employee in an amount equal to $367,744.00, which is 100% of Employee's base salary immediately prior to commencement of the Transition Period, (the "Severance Payment"). The Severance Payment shall be paid in lump sum on ViewRay's first payroll period beginning after the Separation Date, and

      ii. To the extent the Employee timely and properly elects health insurance continuation coverage under ViewRay's group health insurance plan under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), ViewRay shall pay for the cost of the monthly COBRA premium for continuing health insurance coverage as elected by Employee (the "COBRA Payment") until the earliest of: (x) 12 months from the Separation Date; (y) the date Employee is no longer eligible to receive COBRA continuation coverage under ViewRay's group health insurance plan; and (z) the date on which Employee secures other employment. Other than as set forth in this Release, the Severance Agreement shall remain in full force and effect under its terms.

   d. During the period beginning April 1, 2023, through June 30, 2023, (the "Consulting Period"), Employee shall render strategic and financial advisory services to ViewRay from time to time, pursuant to the terms of the consulting agreement to be entered into between the Parties effective April 1, 2023, in the form attached hereto as Exhibit A (the "Consulting Agreement").

   e. The Employee's outstanding equity grant awards shall continue to be governed under the respective grant agreement terms through the termination of the Consulting Period.

   f. Regardless of whether Employee enters into this Release, ViewRay will pay Employee all accrued wages, earned and through and including the Separation Date, less applicable holdings, in accordance with ViewRay's regular payroll practices or earlier when required by applicable state law.

2. **Release**. In exchange for the Severance Package (as defined in the Confidential Severance Agreement), and other good and valuable consideration set forth under this Release, Employee and Employee's representatives, heirs, successors and assigns do hereby completely release and

forever discharge ViewRay and any present or past affiliates of ViewRay, and its and their present and former shareholders, officers, directors, members, agents, employees, attorneys, insurers, successors, and assigns (collectively, "Released Parties") from all claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character, known or unknown, mature or unmatured, which Employee may now have or has ever had. This release of claims includes, but is not limited to, all claims arising out of Employee's employment at ViewRay and the termination of that employment, or the failure/refusal of any Released Party hiring Employee, whether based on tort, contract (expressed or implied), or any federal, state, or local law, statute, or regulation (collectively, Released Claims"). By way of example and not in limitation of the foregoing, Released Claims shall include any claims arising under Title VII of the Civil Rights Act of 1964; the Family and Medical Leave Act; the Post Civil War Civil Rights Acts (42 USC §§ 1981-1988); the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1967 (the "ADEA") (this release is meant to comply with the Older Workers Benefit Protection Act ("OWBPA"), 29 U.S.C. § 621 *et seq*., which statute was enacted to, among other things, ensure that individuals forty (40) years of age or older who waive their rights under the ADEA do so knowingly and voluntarily); the Equal Pay Act; the Occupational Safety and Health Act; the Americans with Disabilities Act; the Americans with Disabilities Act Amendments Act of 2008; the Uniform Services Employment and Reemployment Rights Act; the Davis-Bacon Act; the Walsh-Healey Act; the Employee Retirement Income Security Act (other than claims with regard to vested benefits); the Contract Work Hours and Safety Standards Act; Executive Order 11246; the Worker Adjustment and Retraining Notification Act; 42 U.S.C. section 1981; and any state or local statute, rule or regulation governing the employment relationship. This release further includes, any claims asserting breach of contract, breach of the covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, fraud or other tort claims, defamation, invasion of privacy, claims related to disability, any and all claims for wages, commissions, compensation, reimbursement, disbursements, bonuses, benefits, vacation, penalties and any other claims arising under or related to laws or regulations relating to employment. Employee likewise releases the Released Parties for any and all obligations for attorneys' fees, paralegals' fees, and costs incurred in regard to the above claims, or otherwise. Employee further agrees that if any such claim is prosecuted in Employee's name before any court or administrative agency, Employee waives and agrees not to take any award of money or other damages from such suit. Notwithstanding the foregoing, Released Claims shall not include any workers' compensation benefits or other claims which cannot be waived as a matter of law. This releases all waivable claims, including those of which Employee is not aware and those not specifically mentioned in this Release. This Release applies to all claims resulting from anything that has happened up through the date Employee signs this Release. Employee understands that this Release does not waive rights or claims that may arise after the date that this Release is executed.

3. **Waiver of Age Discrimination Claims**. Employee understands and agrees that, by entering into this Release, (i) Employee is waiving any rights or claims Employee might have under the ADEA; (ii) Employee has received consideration beyond that to which Employee was previously entitled; (iii) Employee has been and hereby is advised in writing to consult with an attorney before signing this Release; (iv) Employee has not relied on any statement or promises by anyone other than those contained in the written terms of this Release, and that Employee has entered into this Release knowingly without reliance upon any other representation, promise, or inducement that is not set forth herein; (v) Employee has been offered the opportunity to evaluate the terms of this Release for not less than twenty-one (21) days prior to Employee's execution of the Release, although Employee may choose to execute this Release sooner; and (vi) Employee has a period of seven (7) days following Employee's execution of this Release in which Employee may revoke this Release (the "Revocation Period"). The Parties agree that any material or non-material changes made to this Release after Employee receives this Release do not restart the running of the 21-day period in which Employee may review this Release prior to signing this Release. Employee may revoke this Release by notifying ViewRay in writing of Employee's decision to revoke to Rob Fuchs via email at rfuchs@viewray.com prior to the expiration of the Revocation Period, with the original of the revocation sent via U.S. Mail to: Attention: Rob Fuchs, 1099 18th Street, Suite 3000, Denver, Colorado 80202. This Release shall

become enforceable on the eighth day after the employee signs and delivers this Release to ViewRay, provided Employee does not revoke or otherwise breach Employee's obligations hereunder prior to such time (the "Effective Date").

4. **Employee Representations**. Employee represents and warrants that Employee (i) has been paid all compensation owed (including, but not limited to, overtime and bonus compensation) and for all hours worked; (ii) has received all the leave and leave benefits and protections for which Employee was eligible, pursuant to the Family and Medical Leave Act or otherwise, and (iii) has not suffered any on-the-job injury for which Employee has not already filed a claim.

5. **General Releases Extend to Both Known and Unknown, Suspected and Unsuspected Claims (Applicable to California Employees Only)**. Employee acknowledges that he or she has read and fully understands the provisions of Section 1542 of the California Civil Code, which provides:

> **A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

Employee intends the releases set forth in this Release to include all claims encompassed by paragraph 2, whether known and/or unknown, to waive and relinquish every right or benefit he or she has, had, or may have under California Civil Code section 1542, and intend his or her release to extend to, and include without limitation all claims which are presently unknown, unanticipated and/or unsuspected.

Employee further acknowledges and agrees that California Labor Code section 206.5 is not applicable to the resolution of this matter. That section provides in pertinent part as follows:

> **No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wage has been made.**

In connection with the foregoing, Employee acknowledges, agrees, represents and warrants that, at all times relevant to Employee's employment with ViewRay, Employee has been fully and properly paid for all time worked, or there is otherwise a genuine, reasonable, and good faith dispute between the parties with respect to same, and that, by this Release, Employee is releasing any claim to entitlement for any recovery of any nature whatsoever arising out of any such claim.

6. **Non-Interference**. Nothing in this Release shall be construed to prohibit the Employee from: (i) filing a charge or participating in any investigation or proceeding conducted by the Equal Employment Opportunity Commission or other federal, state or local government agency charged with enforcement of any law; (ii) reporting possible violations of any law, rule or regulation to any governmental agency or entity charged with enforcement of any law, rule or regulation; or (iii) making other disclosures that are protected under whistleblower provisions of any law, rule or regulation. Notwithstanding the foregoing, by signing this Release, the Employee acknowledges and agrees that the Employee waives not only the Employee's right to recover money or any other relief in any action the Employee might commence against ViewRay or any of the Released Parties with respect to the claims released in paragraph 2 above, but also the Employee's right to recovery in any such action brought against ViewRay or any of the Released Parties by any government agency or other party, whether brought on the Employee's behalf or otherwise.

7. **No Claims Filed**. Employee affirms that Employee has not filed, has not caused to be filed, and is not presently party to, any claims, causes of action, lawsuits or arbitrations against any of the Released Parties in any forum. Employee's representation to same constitutes a material

inducement for ViewRay entering into this Release. In the event that Employee has filed such a claim or cause of action, it will be considered a material breach of the terms of this Release.

8. **Acknowledgment**. The Employee acknowledges that the Employee has been advised in writing to consult with an attorney before signing this Release and that the Employee has been afforded the opportunity to consider the terms of this Release and incorporated waiver of claims for a period of twenty-one (21) days prior to its execution. The Employee acknowledges that no representation, promise or inducement has been made other than as set forth in this Release, and that the Employee enters into this Release without reliance upon any representation, promise or inducement not set forth herein. The Employee acknowledges and represents that the Employee assumes the risk for any mistake of fact now known or unknown, and that the Employee understands and acknowledges the significance and consequences of this Release. The Employee further acknowledges that the Employee has read this Release in its entirety; that the Employee fully understands all of the terms of the Release and their significance; and that the Employee has signed the Release voluntarily and of the Employee's own free will. The Employee further affirms that, upon receipt of their final paycheck on April 7, 2023 the Employee will have been paid and/or have received all leave (paid or unpaid), base salary, bonuses, and all other compensation and benefits to which the Employee may have been entitled from ViewRay through the Separation Date. The Employee further and specifically affirms that the Employee has been provided and/or has not been denied any leave requested under the Family and Medical Leave Act and has not suffered any workplace injuries.

9. **Fiduciary Obligations/Cooperation**: This Release in no way relieves the Employee of any fiduciary obligations the Employee may owe to ViewRay. The Employee agrees to cooperate with ViewRay in any investigations, defenses to claims, prosecution of claims, depositions, court appearances and all other inquiries of the Employee which relate to services that the Employee performed for ViewRay.

10. **Breach**. The Employee acknowledges that if the Employee materially breaches or threatens to materially breach any provision of this Release and/or commences a suit or action in contravention of this Release (except as outlined in paragraph 6 above), ViewRay's obligations to pay the Severance Package pursuant to the Confidential Severance Agreement shall immediately cease and ViewRay shall be entitled to all other remedies allowed in law or equity. Nothing in this paragraph regarding the return of monies is intended to, nor shall be construed to abrogate any contrary rights under the ADEA.

11. **Non-Admission**. The Parties understand that the entering into this Release, the Severance Package provided under the Confidential Severance Agreement and other matters agreed to herein are not to be construed as an admission of or evidence of liability for any violation of the law, willful or otherwise, by any entity or any person.

12. **Severability**. If any provisions in this Release, other than the waiver and release provisions in paragraph 2, are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

13. **Transfer of Claims**. Employee represents and warrants that Employee has not assigned, transferred, or purported to assign or transfer, to any person, firm, corporation, association or entity whatsoever, any claims released herein. Employee agrees to indemnify and hold the Released Parties harmless against, without any limitation, any and all rights, claims, warranties, demands, debts, obligations, liabilities, costs, court costs, expenses (including attorneys' fees, paralegals' fees and costs, at all levels), causes of action or judgments based on or arising out of any such assignment or transfer. Employee further warrants that there is nothing that would prohibit Employee from entering into this Release.

14. **Binding Effect**. This Release shall be binding upon and shall inure to the benefit of the Parties' representatives, agents, successors, assigns, heirs, attorneys, affiliates, and predecessors.

15. **Enforcement**. This Release shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to its choice of law principles. If either party breaches this Release or any dispute arises out of or relating to this Release, the prevailing party shall be entitled to its reasonable attorneys' fees, paralegals' fees and costs, at all levels. THE PARTIES SPECIFICALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY SUCH ACTION. However, nothing in this paragraph is intended to, nor shall be construed to abrogate any contrary rights under the ADEA.

16. **Interpretation**. This Release shall be construed as a whole, according to its fair meaning, and not in favor of or against any Party. By way of example and not in limitation, this Release shall not be construed in favor of the Party receiving a benefit nor against the Party responsible for any particular language in this Release.

17. **Construction**. The Parties expressly acknowledge that they have had equal opportunity to negotiate the terms of this Release and that this Release shall not be construed against the drafter.

18. **Headings**. The headings contained in the Release are for reference purposes only and shall not in any way affect the meaning or interpretation of this Release.

19. **Electronic Transmissions and Counterparts**. This Release may be executed in several counterparts and by electronic transmissions (e-mail, facsimile and/or scanner) and all so executed shall constitute one Release, binding on all the Parties hereto, notwithstanding that the Parties are not signatories to the original or same counterpart.

20. **Representation by Counsel**. The Parties acknowledge that (i) they have had the opportunity to consult counsel in regard to this Release, (ii) they have read and understand the Release and they are fully aware of its legal effect; and (iii) they are entering into this Release freely and voluntarily, and based on each Party's own judgment and not on any representations or promises made by the other Party, other than those contained in this Release.

21. **Acceptance**. To accept this Release, Employee must sign and date below and return an original copy to ViewRay within 21 days at the following address: Attention: Rob Fuchs, 1099 18th Street, Suite 3000, Denver, Colorado 80202.

22. **Right of Revocation/Effective Date**: The Employee has the right to revoke this Release within seven (7) days after the Employee's execution of this Release by giving notice in writing of such revocation to ViewRay, Attention: Rob Fuchs, Email: rfuchs@viewray.com prior to the expiration of the Revocation Period. As such, the Release shall not become effective until the Effective Date. In the event that the Employee revokes this Release prior to the Effective Date, this Release, and the promises contained therein, shall automatically be deemed null and void.

The Employee represents and warrants that the Employee has read this Release in its entirety, has been offered a period of twenty-one (21) days to review this Release and incorporated release prior to its execution, and has been advised in writing herein to consult with counsel. The Employee further represents and warrants that the Employee is of sound mind and fully understands and voluntarily assents to all of the terms of the Release.

EMPLOYEE:

Date: _____

VIEWRAY, INC.

By: Rob Fuchs
Its: Chief Human Resources Officer
Date: _____

Exhibit 10.32

January 6, 2023

William Burke 8 Forster Dr.

Norton, MA 02766 William,

Congratulations! We are excited to extend you an offer of employment with ViewRay Technologies, Inc. The details of your offer are as follows:

Position:	EVP, Chief Financial Officer, reporting to Scott Drake, CEO. This is a regular full-time position.
Start Date:	January 6, 2023
Compensation:	Your starting salary will be $17,307.69 biweekly which is equivalent to $450,000.00, annually. Eligible to participate in the Company's Performance Based Bonus Plan. This bonus plan is based on corporate goals established by the Company's Board of Directors. At 100% to plan, this bonus plan will provide an opportunity to earn 60% of your base salary in variable incentive compensation. Actual incentive compensation may range from 0% - 200% of the target based on performance to goals. For the first calendar year it is prorated based on your start date. Position is classified as exempt from overtime.
Signing Bonus:	$200,000.00 subject to applicable tax withholding to be in January 2024. If your employment with the Company terminates, with or without cause, before the 1-year anniversary of the signing Bonus payment date, you will repay the prorated amount within thirty (30) days of the date of termination, to the extent permitted by applicable law.
Equity:	You will receive an equity grant in the total value of $2,100,000 under the terms and conditions set forth in a separate grant agreement and the Company's 2015 Stock Incentive Plan, as amended (the "Plan"). This equity grant will distribute in the following manner: 1. $1.2M will be granted Restricted Stock Units (RSUs). The award will vest over a 3- year period. One-third of the award will vest 12 months after the grant date, and additional one third will vest 24 months after the grant date and the final one-third will vest 36 months after the grant date. Your grant date will be January 16, 2023. 2. $900K will be granted during the executive annual equity grant cycle. The target date for this grant is ~ March 1, 2023. This grant will be issued as follows: a. $450K in Restricted Stock Units (RSUs) b. $150K in the '22 Performance Share plan (PSUs) c. $300K in the '23 Performance Share plan (PSUs)
Severance	Eligible to participate in the Executive severance program.
Time Off:	As a full-time exempt teammate, you are eligible for paid time off under the ViewRay's Flexible Paid Time Off ("FTO") Policy. In addition, we offer 10 paid company holidays.
Health Benefits:	We offer teammates medical, dental and vision insurance plans. Coverage begins on your start date. ViewRay pays 100% of the premium for both Short Term Disability up to 66 2/3% of your weekly salary and Long-Term Disability up to 66 2/3% of your base monthly salary, for approved claims per plan. ViewRay also pays 100% of the premiums for basic life and AD&D insurance up to 1.5x your base annual salary or $250,000. Other plans include HSA, FSA, accident, critical illness, hospital indemnity, legal, voluntary life and AD&D, and an Employee Assistance Program.

401(k):	You are eligible to begin contributions to the Company's 401k plan on the first payroll date in the month following your hire date. The plan offers a competitive match of 50% on the first 8% of pay you elect to contribute. (Subject to the IRS contribution limits). The ViewRay company match vests immediately.

A summary of the benefits available to you is attached. For the full details please refer to the benefits guide. The Company reserves the right from time to time to change the company benefits and related plans.

Consistent with state law, your employment with the Company will be "at-will." This means that your employment with the Company will not last for any specific period, and either you or the Company can terminate your employment without notice and for any reason or for no reason. This offer is expressly conditioned upon your successful completion of the Company's pre-employment screening process, including references, a background check and drug screen (depending on the position). As part of your employment at the Company, you are required to sign the attached Confidentiality and Restrictive Covenant agreement, and always, you are required to comply with the Company's corporate policies and procedures.

By accepting this offer, you represent and warrant that (i) you are not bound by any employment contract, restrictive covenant or other restriction preventing you from entering into employment with or carrying out your responsibilities for the Company and (ii) you will not bring to the Company any confidential or proprietary information or material of any former employer; disclose or use such information or material in the course of your employment with the Company; or violate any other obligation to your former employers. Further, you agree to execute all documentation necessary for the Company to verify your right to work in the United States and to conduct a background check, and you expressly release the Company from any claim arising out of the Company's verification of such information.

If you wish to accept this offer, please sign, and return this letter. Your signature below indicates your acceptance of the terms of this offer and the representations contained above. We appreciate the time you have invested in this process, and we look forward to welcoming you to our team!

Sincerely,

Rob Fuchs
CHRO – ViewRay Inc.

Acknowledged and Accepted:

_____
William Burke Date

Subsidiaries

Entity	**Jurisdiction of Organization**
ViewRay Technologies, Inc. (formerly known as ViewRay Incorporated)	Delaware
ViewRay GmbH	Germany

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statements No. 333-216797, No. 333-222264, and No. 333-26111 on Form S-3, and Registration Statements No. 333-224013, No. 333-226797, No. 333-227383, No. 333-216794, No. 333-210472, No. 333-230460, No. 333-239507, and No. 333-265590 on Form S-8 of our report dated February 28, 2023, relating to the consolidated financial statements of ViewRay, Inc. and its subsidiaries appearing in this Annual Report on Form 10-K of the Company for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP
Denver, CO
February 28, 2023

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO
EXCHANGE ACT RULE 13a-14(a)/15d-14(a)
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Scott Drake, certify that:

1. I have reviewed this Annual Report on Form 10-K of ViewRay, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 28, 2023

/s/ Scott Drake

Scott Drake

Title: Chief Executive Officer and President
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO
EXCHANGE ACT RULE 13a-14(a)/15d-14(a)
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, William Burke, certify that:

1. I have reviewed this Annual Report on Form 10-K of ViewRay, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 28, 2023

/s/ William Burke

William Burke

Title: Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officers of ViewRay, Inc., a Delaware corporation (the "Company"), hereby does certify that:

(i) the Annual Report on Form 10-K of the Company for the year ended December 31, 2022 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

The foregoing certification (i) is given to such officers' knowledge, based upon such officers' investigation as such officers reasonably deem appropriate; and (ii) is being furnished solely pursuant to 18 U.S.C. § 1350 (section 906 of the Sarbanes-Oxley Act of 2002) and is not being filed as part of the Report or as a separate disclosure document and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Report), irrespective of any general incorporation language contained in such filing.

VIEWRAY, INC.

Dated: February 28, 2023

By: /s/ Scott Drake
Name: Scott Drake
Title: Chief Executive Officer
(Principal Executive Officer)

Dated: February 28, 2023

By: /s/ William Burke
Name: William Burke
Title: Chief Financial Officer
(Principal Financial Officer)