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

FORM 10-Q

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended September 30, 2013

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: 001-34256

HEARTWARE INTERNATIONAL, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State of
Incorporation)

26-3636023
(I.R.S. Employer
Identification No.)

205 Newbury Street, Suite 101
Framingham, Massachusetts 01701
+1 508 739 0950

(Address of principal executive offices)

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file 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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class
Common Stock, \$0.001 Par Value Per Share

Shares Outstanding as of November 1, 2013
16,462,034

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References

Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to “HeartWare,” “the Company,” “HeartWare Group,” “we,” “us” and “our” refer to HeartWare International, Inc. and its consolidated subsidiaries.

Currency

Unless indicated otherwise in this Quarterly Report on Form 10-Q, all references to “\$”, “U.S.\$” or “dollars” refer to United States dollars, the lawful currency of the United States of America. References to “AUS\$” refer to Australian dollars, the lawful currency of the Commonwealth of Australia. References to “Euros” refer to Euros, the single currency of Participating Member States of the European Union. References to “British Pounds” refer to British pound sterling, the lawful currency of the United Kingdom.

Trademarks

HEARTWARE®, HVAD®, MVAD® and PAL™ and various company logos are the trademarks of the Company, in the United States, Europe, Australia and other countries. All other trademarks and trade names mentioned in this Quarterly Report on Form 10-Q are the property of their respective owners.

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements are based on our management’s beliefs, assumptions and expectations and on information currently available to our management. Generally, you can identify forward-looking statements by terms such as “may,” “will,” “should,” “could,” “would,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “projects,” “predicts,” “potential” and similar expressions intended to identify forward-looking statements, which generally are not historical in nature. All statements that address operating or financial performance, events or developments that we expect or anticipate will occur in the future are forward-looking statements, including without limitation:

- our expectations with respect to submissions to and approvals from regulatory bodies, such as the United States Food and Drug Administration (“FDA”);
- our expectations with respect to our clinical trials, including enrollment, completion and outcomes of our clinical trials as well as approval of new clinical trials and additional patient cohorts with respect to our existing clinical trials;
- our expectations with respect to the integrity or strengths of our intellectual property position;
- our ability and plans to commercialize our existing products;
- our ability and plans to develop and commercialize new products and the expected features, functionalities and benefits of these products; and
- our estimates regarding our capital requirements and financial performance, including earnings fluctuation and cash availability.

Our management believes that these forward-looking statements are reasonable as and when made. However, you should not place undue reliance on our forward-looking statements because they speak only as of the date when made. We do not assume any obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by federal securities laws and the rules and regulations of the Securities and Exchange Commission (the “SEC”). We may not actually achieve the plans, projections or expectations disclosed in our forward-looking statements, and actual results, developments or events could differ materially from those disclosed in the forward-looking statements. Forward-looking statements are subject to a number of risks and uncertainties, including without limitation those described in Part I, Item 1A Risk Factors in our Annual Report on Form 10-K for the fiscal year ended December 31, 2012 filed with the SEC on February 27, 2013, and those described from time to time in our other filings with the SEC.

PART I. FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except per share data)

	September 30, 2013 <u>(unaudited)</u>	December 31, 2012 <u></u>
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 187,906	\$ 85,921
Short-term investments	35,875	16,887
Accounts receivable, net	30,305	25,225
Inventories	37,883	38,443
Prepaid expenses and other current assets	<u>11,511</u>	<u>5,925</u>
Total current assets	303,480	172,401
Property, plant and equipment, net	16,312	19,380
Goodwill	1,190	1,190
Other intangible assets, net	8,003	7,794
Deferred financing costs, net	2,059	2,329
Long-term investments	1,225	—
Other assets	<u>3,686</u>	<u>3,405</u>
Total assets	<u>\$ 335,955</u>	<u>\$ 206,499</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 9,280	\$ 12,024
Other accrued liabilities	<u>25,694</u>	<u>22,020</u>
Total current liabilities	34,974	34,044
Convertible senior notes, net	105,345	100,315
Other long-term liabilities	3,691	3,929
Commitments and contingencies – See Note 15		
Stockholders' equity:		
Preferred stock – \$.001 par value; 5,000 shares authorized; no shares issued and outstanding at September 30, 2013 and December 31, 2012	—	—
Common stock – \$.001 par value; 25,000 shares authorized; 16,458 and 14,582 shares issued and outstanding at September 30, 2013 and December 31, 2012, respectively	16	15
Additional paid-in capital	507,098	346,301
Accumulated deficit	(307,305)	(270,042)
Accumulated other comprehensive loss:		
Cumulative translation adjustments	(7,835)	(8,039)
Unrealized loss on investments	<u>(29)</u>	<u>(24)</u>
Total accumulated other comprehensive loss	(7,864)	(8,063)
Total stockholders' equity	<u>191,945</u>	<u>68,211</u>
Total liabilities and stockholders' equity	<u>\$ 335,955</u>	<u>\$ 206,499</u>

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

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)
(In thousands, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
Revenue, net	\$ 54,800	\$ 22,862	\$154,875	\$ 78,261
Cost of revenue	<u>19,529</u>	<u>10,925</u>	<u>57,175</u>	<u>34,418</u>
Gross profit	35,271	11,937	97,700	43,843
Operating expenses:				
Selling, general and administrative	19,844	13,768	53,548	40,687
Research and development	<u>25,930</u>	<u>21,379</u>	<u>72,201</u>	<u>61,392</u>
Total operating expenses	45,774	35,147	125,749	102,079
Loss from operations	(10,503)	(23,210)	(28,049)	(58,236)
Other income (expense):				
Foreign exchange gain (loss)	2,082	1,153	(416)	63
Interest expense	(3,082)	(2,876)	(9,088)	(8,477)
Investment income, net	53	28	162	198
Other, net	<u>79</u>	<u>(81)</u>	<u>128</u>	<u>(161)</u>
Loss before income taxes	(11,371)	(24,986)	(37,263)	(66,613)
Provision for income taxes	—	—	—	—
Net loss	<u>\$ (11,371)</u>	<u>\$ (24,986)</u>	<u>\$ (37,263)</u>	<u>\$ (66,613)</u>
Net loss per common share — basic and diluted	<u>\$ (0.69)</u>	<u>\$ (1.75)</u>	<u>\$ (2.34)</u>	<u>\$ (4.70)</u>
Weighted average shares outstanding — basic and diluted	<u>16,439</u>	<u>14,274</u>	<u>15,895</u>	<u>14,185</u>

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

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(unaudited)
(In thousands)

	<u>Three Months Ended</u> <u>September 30,</u>		<u>Nine Months Ended</u> <u>September 30,</u>	
	<u>2013</u>	<u>2012</u>	<u>2013</u>	<u>2012</u>
Net loss	\$(11,371)	\$(24,986)	\$(37,263)	\$(66,613)
Other comprehensive income (loss)				
Foreign currency translation adjustments	(186)	(189)	204	(259)
Unrealized gain (loss) on investments	39	3	(5)	23
Comprehensive loss	<u>\$(11,518)</u>	<u>\$(25,172)</u>	<u>\$(37,064)</u>	<u>\$(66,849)</u>

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

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY
(unaudited)
(In thousands, except per share data)

	Common Shares, \$0.001 Par Value Per Share		Additional Paid-In Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total
	Shares Issued	Amount				
Balance, December 31, 2012	14,582	\$ 15	\$346,301	\$ (270,042)	\$ (8,063)	\$ 68,211
Issuance of common stock pursuant to public offering, net of offering costs	1,725	1	140,977	—	—	140,978
Issuance of common stock pursuant to share-based awards	151	—	3,378	—	—	3,378
Share-based compensation	—	—	16,442	—	—	16,442
Net loss	—	—	—	(37,263)	—	(37,263)
Other comprehensive income	—	—	—	—	199	199
Balance, September 30, 2013	<u>16,458</u>	<u>\$ 16</u>	<u>\$507,098</u>	<u>\$ (307,305)</u>	<u>\$ (7,864)</u>	<u>\$191,945</u>

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

HEARTWARE INTERNATIONAL, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited)
(In thousands)

	Nine Months Ended September 30,	
	2013	2012
CASH FLOWS FROM OPERATING ACTIVITIES		
Net loss	\$ (37,263)	\$ (66,613)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation of property, plant and equipment	4,823	3,322
Amortization of intangible assets	375	123
Share-based compensation expense	16,442	14,947
Amortization of premium on investments	437	534
Amortization of discount on convertible senior notes	5,030	4,460
Amortization of deferred financing costs	270	239
Other	711	485
Change in operating assets and liabilities:		
Accounts receivable	(4,806)	(2,190)
Inventories	(768)	(6,684)
Prepaid expenses and other current assets	(5,554)	(1,194)
Accounts payable	(2,741)	4,349
Accrued interest on convertible senior notes	1,262	1,262
Other accrued liabilities	2,396	(50)
Other long-term liabilities	(238)	672
Net cash used in operating activities	<u>(19,624)</u>	<u>(46,338)</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of investments	(23,191)	(15,000)
Maturities of investments	2,226	101,507
Acquisition of World Heart, net of cash acquired	—	3,687
Additions to property, plant and equipment	(2,107)	(4,201)
Proceeds from sale of equipment	743	—
Additions to patents	(584)	(376)
Cash paid for security deposits	—	(750)
Net cash (used in) provided by investing activities	<u>(22,913)</u>	<u>84,867</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from issuance of common stock	149,126	—
Payment of common stock issuance costs	(8,148)	—
Proceeds from exercise of stock options	3,378	2,316
Net cash provided by financing activities	<u>144,356</u>	<u>2,316</u>
Effect of exchange rate changes on cash and cash equivalents	<u>166</u>	<u>(219)</u>
INCREASE IN CASH AND CASH EQUIVALENTS	<u>101,985</u>	<u>40,626</u>
CASH AND CASH EQUIVALENTS — BEGINNING OF PERIOD	<u>85,921</u>	<u>71,257</u>
CASH AND CASH EQUIVALENTS — END OF PERIOD	<u>\$ 187,906</u>	<u>\$ 111,883</u>

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

HEARTWARE INTERNATIONAL, INC.
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Note 1. Basis of Presentation

HeartWare International, Inc., referred to in these notes collectively with its subsidiaries as “we,” “our,” “HeartWare,” the “HeartWare Group” or the “Company,” is a medical device company that develops, manufactures and markets miniaturized implantable heart pumps, or ventricular assist devices, to treat patients suffering from advanced heart failure.

The accompanying unaudited interim condensed consolidated financial statements have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) for reporting of interim financial information. Pursuant to these rules and regulations, certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. Accordingly, these statements do not include all the disclosures normally required by accounting principles generally accepted in the United States for annual financial statements and should be read in conjunction with Management’s Discussion and Analysis of Financial Condition and Results of Operations contained in this report and the audited financial statements and notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2012. The accompanying condensed consolidated balance sheet as of December 31, 2012 has been derived from our audited financial statements. The condensed consolidated statements of operations for the three and nine months ended September 30, 2013 and cash flows for the nine months ended September 30, 2013 are not necessarily indicative of the results to be expected for any future period or for the year ending December 31, 2013.

In the opinion of management, the accompanying unaudited interim condensed consolidated financial statements contain all adjustments (consisting of only normally recurring adjustments) necessary to present fairly the financial position and results of operations as of the dates and for the periods presented.

Note 2. Liquidity

At September 30, 2013, we had approximately \$225.0 million of cash, cash equivalents and investments.

We have financed our operations primarily through the issuance of shares of our common stock and the issuance of convertible notes. Most recently, in March 2013, we completed a public offering of 1,725,000 shares of our common stock, including the underwriters’ exercise of their over-allotment option to purchase 225,000 shares, at an offering price of \$86.45 per share for aggregate gross proceeds of approximately \$149.1 million. After fees and related expenses, net proceeds from the offering were approximately \$141.0 million. *See* Note 11 (Stockholders’ Equity) for more information.

For the remainder of 2013, our cash, cash equivalents and investments are expected to primarily be used to fund our ongoing operations including expanding our sales and marketing capabilities on a global basis, research and development of new and existing products (including clinical trials), components and accessories, regulatory and other compliance functions as well as for general working capital. We believe our cash, cash equivalents and investment balances are sufficient to support our planned operations for at least the next twelve months.

The accompanying condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States, which contemplate continuation of the Company as a going concern. We have incurred substantial losses from operations since our inception, and losses have continued through September 30, 2013. At September 30, 2013, we had an accumulated deficit of approximately \$307.3 million.

Note 3. Significant Accounting Policies

Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of the HeartWare Group. All inter-company balances and transactions have been eliminated in consolidation. We hold certain investments in small privately-held development-stage entities which are included in other assets on our condensed consolidated balance sheets. In accordance with FASB ASC 810, we analyzed the investments to determine whether the investments are variable interests or interests that give us a controlling financial interest in a variable interest entity ("VIE"). As of September 30, 2013, we determined there were no VIEs required to be consolidated, because we are not the primary beneficiary, as we do not have the power to direct the most meaningful activities of the VIE. Investments where we do not exercise operating and financial control are accounted for under the equity method or cost method depending on our ownership interest.

Accounting Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from those estimates. Our most critical accounting policies and estimates include: revenue recognition, inventory capitalization and valuation, accounting for share-based compensation, measurement of fair value, and the valuation of tax assets and liabilities.

Cash and Cash Equivalents

Cash and cash equivalents are recorded on our condensed consolidated balance sheets at cost, which approximates fair value. All highly liquid investments with an original maturity of three months or less at the date of purchase are considered to be cash equivalents.

Investments

Our investments classified as available-for-sale are stated at fair value with unrealized gains and losses reported in accumulated other comprehensive loss within stockholders' equity. We classify our available-for-sale investments as short-term if their remaining time to maturity at purchase is beyond three months, but less than twenty-four months. Investments with maturities at purchase beyond one year, but less than twenty-four months, may be classified as short-term based on their highly liquid nature and because these marketable securities represent the investment of cash that is available for current operations. Interest on investments classified as available-for-sale is included in investment income, net. Premiums paid on our short-term investments are amortized over the remaining term of the investment and the amortization is included in investment income, net.

Receivables

Accounts receivable consists of amounts due from the sale of our HeartWare® Ventricular Assist System (the "HeartWare System") to our customers, which include hospitals, health research institutions and medical device distributors. We grant credit to customers in the normal course of business, but generally do not require collateral or any other security to support credit sales. Our receivables are geographically dispersed, with a significant portion from customers located in Europe and other foreign countries. At September 30, 2013, one customer had an accounts receivable balance greater than 10% of total accounts receivable representing approximately 13% of our total accounts receivable. At December 31, 2012, no customer had an accounts receivable balance greater than 10% of our total accounts receivable.

We maintain allowances for doubtful accounts for estimated losses that may result from an inability to collect payments owed to us for product sales. We regularly review the allowance by considering factors such as historical experience, the age of the accounts receivable balances and local economic conditions that may affect a customer's ability to pay. Account balances are charged off against the allowance after appropriate collection efforts have been exhausted and we feel it is probable that the receivable will not be recovered.

The following table summarizes the change in our allowance for doubtful accounts for the nine months ended September 30, 2013 and 2012:

	<u>2013</u>	<u>2012</u>
	(in thousands)	
Beginning balance	\$ 750	\$500
(Reversals) charges to expense	(206)	250
Charge-offs	—	—
Ending balance	<u>\$ 544</u>	<u>\$750</u>

As of September 30, 2013 and December 31, 2012, we did not have an allowance for returns.

Inventories

Inventories are stated at the lower of cost or market. Cost is determined using a first-in, first-out, or FIFO, method. Work-in-process and finished goods manufactured or assembled by us include direct and indirect labor and manufacturing overhead. Finished goods include product which is ready-for-use and which is held by us or by our customers on a consignment basis.

We review our inventory for excess or obsolete inventory and write-down obsolete or otherwise unmarketable inventory to its estimated net realizable value. Obsolescence may occur due to product expiring or product improvements rendering previous versions obsolete.

Deferred Financing Costs

Costs incurred in connection with the issuance of our convertible senior notes have been allocated between the liability component and the equity component as further discussed in Note 10 (Debt). The issuance costs allocated to the convertible senior notes were capitalized within deferred financing costs, net on our condensed consolidated balance sheets. These costs are being amortized using the effective interest method through December 15, 2017, the maturity date of the notes, and the amortization expense is reflected in interest expense on our condensed consolidated statements of operations. The amount of amortization for the three months ended September 30, 2013 and 2012 was approximately \$0.1 million for each period. The amount of amortization for the nine months ended September 30, 2013 and 2012 was approximately \$0.3 million and \$0.2 million, respectively. The amount of accumulated amortization at September 30, 2013 and December 31, 2012 was approximately \$0.9 million and \$0.6 million, respectively.

Product Warranty

Certain patient accessories sold with the HeartWare System are covered by a limited warranty ranging from one to two years. Estimated contractual warranty obligations are recorded as an expense when the related revenue is recognized and are included in cost of revenue on our condensed consolidated statements of operations. Factors that affect estimated warranty liability include the number of units sold, historical and anticipated rates of warranty claims, cost per claim, and vendor supported warranty programs. We periodically assess the adequacy of our recorded warranty liabilities and adjust the amounts as necessary.

The amount of the liability recorded is equal to the estimated costs to repair or otherwise satisfy claims made by customers. Accrued warranty expense is included as a component of other accrued liabilities on our condensed consolidated balance sheets.

The costs to repair or replace products associated with product recalls and voluntary service campaigns are recorded when they are determined to be probable and reasonably estimable as a cost of revenue and are not included in product warranty liability. No such costs were incurred in the three and nine months ended September 30, 2013 and 2012.

The following table summarizes the change in our warranty liability for the nine months ended September 30, 2013 and 2012:

	<u>2013</u>	<u>2012</u>
	(in thousands)	
Beginning balance	\$ 543	\$ 203
Accrual for warranty expense	856	668
Warranty costs incurred during the period	<u>(345)</u>	<u>(453)</u>
Ending balance	<u>\$1,054</u>	<u>\$ 418</u>

Leases

We lease all of our administrative and manufacturing facilities. We recognize rent expense on a straight-line basis over the terms of our leases. Any scheduled rent increases, rent holidays and other related incentives are recognized on a straight-line basis over the terms of the leases. The difference between the cash rental payments and the straight-line recognition of rent expense over the terms of the leases results in a deferred rent asset or liability. As of September 30, 2013, the long-term portion of our deferred rent liability of approximately \$2.6 million is included in other long-term liabilities on our condensed consolidated balance sheets.

Fair Value Measurements

The carrying amounts reported on our condensed consolidated balance sheets for cash and cash equivalents, accounts receivable, accounts payable and other accrued liabilities approximate their fair value based on the short-term maturity of these instruments. Investments are considered available-for-sale as of September 30, 2013 and December 31, 2012 and are carried at fair value. See Note 4 (Fair Value Measurements) and Note 10 (Debt) for more information.

Vendor Concentration

For the three and nine months ended September 30, 2013, we purchased approximately 69% and 68%, respectively, of our inventory components and supplies from three vendors. For the three and nine months ended September 30, 2012, we purchased approximately 57% and 66%, respectively, of our inventory components and supplies from the same three vendors. In addition, one of these vendors provides consulting services and material used in research and development activities. As of September 30, 2013 and 2012, the amounts due to these vendors totaled approximately \$3.2 million and \$2.9 million, respectively.

We purchase certain important components of the HeartWare System from single-source suppliers. We cannot guarantee that we can secure alternative suppliers that could provide similar components on comparable terms and consistent with regulatory requirements. A change in suppliers could cause a delay in manufacturing and a possible loss of product sales or result in higher component costs, all of which would have a negative effect on our results of operations.

Concentration of Credit Risk and other Risks and Uncertainties

Financial instruments that potentially expose us to concentrations of credit risk consist primarily of cash and cash equivalents, investments and trade accounts receivable. Cash and cash equivalents are primarily on deposit with financial institutions in the United States and these deposits generally exceed the amount of insurance provided by the Federal Deposit Insurance Corporation (the "FDIC"). The Company has not experienced any historical losses on its deposits of cash and cash equivalents. Our investments consist of investment grade rated corporate and government agency debt and time deposits.

Concentration of credit risk with respect to our trade accounts receivable from our customers is primarily limited to hospitals, health research institutions and medical device distributors. Credit is extended to our customers, based on an evaluation of a customer's financial condition and collateral is generally not required.

We are subject to certain risks and uncertainties including, but not limited to, our ability to achieve profitability, to generate cash flow sufficient to satisfy our indebtedness, to run clinical trials in order to receive and maintain FDA and foreign regulatory approvals for our products, to achieve widespread acceptance of our products, to manufacture our products in a sufficient volume and at a reasonable cost, and to protect our proprietary technologies and develop new products as well as risks associated with operating in foreign countries, and general competitive and economic conditions. Changes in any of the preceding areas could have a material adverse effect on our business, results of operations or financial position.

New Accounting Standards

In September 2012, the FASB issued ASU No. 2012-02, *Intangibles – Goodwill and Other (Topic 350), Testing Indefinite-Lived Intangible Assets for Impairment*, which provides an entity the option first to assess qualitative factors to determine whether the existence of events and circumstances indicates that it is more likely than not that an indefinite-lived intangible asset is impaired. If, after assessing the totality of events and circumstances, an entity concludes that it is not more likely than not that the indefinite-lived intangible asset is impaired, then the entity is not required to take further action. The qualitative assessment is optional, allowing companies to go directly to the quantitative assessment. ASU No. 2012-02 is effective for our annual and interim impairment tests performed subsequent to January 1, 2013. The adoption of ASU No. 2012-02 did not affect our consolidated financial position, results of operations or cash flows.

In July 2013, the FASB issued ASU No. 2013-11, *Income Taxes (Topic 740): Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward, a Similar Tax Loss, or a Tax Credit Carryforward Exists (a consensus of the FASB Emerging Issues Task Force)*. U.S. GAAP does not include explicit guidance on the financial statement presentation of an unrecognized tax benefit when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists. The amendments in this ASU state that an unrecognized tax benefit, or a portion of an unrecognized tax benefit, should be presented in the financial statements as a reduction to a deferred tax asset for a net operating loss carryforward, a similar tax loss, or a tax credit carryforward, except as follows: To the extent a net operating loss carryforward, a similar tax loss, or a tax credit carryforward is not available at the reporting date under the tax law of the applicable jurisdiction to settle any additional income taxes that would result from the disallowance of a tax position or the tax law of the applicable jurisdiction does not require the entity to use, and the entity does not intend to use, the deferred tax asset for such purpose, the unrecognized tax benefit should be presented in the financial statements as a liability and should not be combined with deferred tax assets. This ASU applies to all entities that have unrecognized tax benefits when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists at the reporting date. The amendments in this ASU are effective for fiscal years, and interim periods within those years, beginning after December 15, 2013, with early adoption permitted. The amendments should be applied prospectively to all unrecognized tax benefits that exist at the effective date, although retrospective application is permitted. We plan to adopt ASU No. 2013-11 effective January 1, 2014. The adoption of ASU No. 2013-11 is not expected to have a material effect on our consolidated financial position, results of operations or cash flows.

Note 4. Fair Value Measurements

FASB ASC 820 – *Fair Value Measurements and Disclosures*, defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. FASB ASC 820 requires disclosures about the fair value of all financial instruments, whether or not recognized, for financial statement purposes. Disclosures about the fair value of financial instruments are based on pertinent information available to us as of the reporting dates. Accordingly, the estimates presented in the accompanying condensed consolidated financial statements are not necessarily indicative of the amounts that could be realized on disposition of the financial instruments.

FASB ASC 820 specifies a hierarchy of valuation techniques based on whether the inputs to those valuation techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect market assumptions. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurement) and the lowest priority to unobservable inputs (Level 3 measurement).

The three levels of the fair value hierarchy are as follows:

Level 1 – Quoted prices for identical instruments in active markets.

Level 2 – Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.

Level 3 – Instruments with primarily unobservable value drivers.

The following table represents the fair value of our financial assets and financial liabilities measured at fair value on a recurring basis and which level was used in the fair value hierarchy.

At September 30, 2013						
	Carrying Value	Fair Value	Fair Value Measurements at the Reporting Date Using			
			Level 1	Level 2	Level 3	
(in thousands)						
Assets						
Short-term investments	\$ 35,875	\$ 35,875	\$ —	\$ 35,875	\$ —	
Long-term investments	1,225	1,225	—	1,225	—	
Liabilities						
Convertible senior notes	105,345	(1) 160,281	—	160,281	—	
Royalties	981	(2) 981	—	—	981	
At December 31, 2012						
	Carrying Value	Fair Value	Fair Value Measurements at the Reporting Date Using			
			Level 1	Level 2	Level 3	
(in thousands)						
Assets						
Short-term investments	\$ 16,887	\$ 16,887	\$ —	\$ 16,887	\$ —	
Liabilities						
Convertible senior notes	100,315	(1) 169,122	—	169,122	—	
Royalties	1,113	(2) 1,113	—	—	1,113	

- (1) The carrying amount of our convertible senior notes is net of unamortized discount. See Note 10 (Debt) for more information.
- (2) Royalties represent the fair value of future royalty payments to be made pursuant to agreements related to intellectual property licensed or acquired by World Heart to be paid over the next 3 to 17 years.

The fair value of our investments and convertible senior notes was determined using quoted prices (including trade data) for the instruments in markets that are not active. The fair value of our convertible senior notes is presented for disclosure purposes only.

Financial assets and liabilities are considered Level 3 when their fair values are determined using pricing models, discounted cash flow methodologies, or similar techniques, and at least one significant model assumption or input is unobservable. At September 30, 2013 and December 31, 2012, our financial liability categorized as Level 3 consisted of royalty payment obligations due under contractual arrangements related to our acquisition of World Heart in August 2012, because the fair value includes significant management judgment or estimation. The royalty payment obligations were valued using a discounted cash flow model, the future minimum royalty payment amounts and discount rates commensurate with our market risk and the terms of the obligations.

The following table summarizes the change in fair value, as determined by Level 3 inputs, of the royalty payment obligations for the nine months ended September 30, 2013:

	Royalties (in thousands)
Beginning balance	\$ 1,113
Payments	(185)
Change in fair value	53
Ending balance	<u>\$ 981</u>

The loss associated with the change in fair value of the royalty payment obligations is included in research and development expenses on our condensed consolidated statements of operations.

Assets That Are Measured at Fair Value on a Nonrecurring Basis

Non-financial assets such as intangible assets, goodwill and property, plant, and equipment are evaluated for impairment annually or when indicators of impairment exist. No impairment was recorded for the three and nine months ended September 30, 2013 and 2012. Non-financial assets such as identified intangibles acquired in connection with our acquisition of World Heart in August 2012 are measured at fair value using Level 3 inputs, which include discounted cash flow methodologies or similar techniques, when there is limited market activity and the determination of fair value requires significant judgment or estimation.

Note 5. Investments

We have cash investment policies that limit investments to investment grade rated securities. At September 30, 2013 and December 31, 2012, all of our investments were classified as available-for-sale and carried at fair value. At September 30, 2013, our short-term investments had maturity dates of less than twenty-four months, while our long-term investments matured beyond twenty-four months, but within thirty-nine months.

The amortized cost and fair value of our investments, with gross unrealized gains and losses, were as follows:

At September 30, 2013

	Amortized Cost Basis	Gross Unrealized Gains	Gross Unrealized Losses	Aggregate Fair Value
(in thousands)				
Short-term investments:				
Corporate debt	\$ 29,824	\$ —	\$ (29)	\$ 29,795
Certificates of deposit	6,080	—	—	6,080
Total short-term investments	<u>\$ 35,904</u>	<u>\$ —</u>	<u>\$ (29)</u>	<u>\$ 35,875</u>
Long-term investments:				
Certificates of deposit	\$ 1,225	\$ —	\$ —	\$ 1,225
Total long-term investments	<u>\$ 1,225</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 1,225</u>

At December 31, 2012

	Amortized Cost Basis	Gross Unrealized Gains	Gross Unrealized Losses	Aggregate Fair Value
(in thousands)				
Short-term investments:				
Corporate debt	\$ 10,565	\$ —	\$ (25)	\$ 10,540
Certificates of deposit	6,346	1	—	6,347
Total short-term investments	<u>\$ 16,911</u>	<u>\$ 1</u>	<u>\$ (25)</u>	<u>\$ 16,887</u>

For the three and nine months ended September 30, 2013 and 2012, we did not have any realized gains or losses on our investments. At September 30, 2013 and December 31, 2012, none of our available-for-sale investments had been in a continuous loss position for more than twelve months.

Note 6. Inventories

Components of inventories are as follows:

	September 30, 2013	December 31, 2012
(in thousands)		
Raw material	\$ 19,398	\$ 11,192
Work-in-process	8,519	11,123
Finished goods	9,966	16,128
	<u>\$ 37,883</u>	<u>\$ 38,443</u>

Finished goods inventories includes inventory held on consignment at customer sites of approximately \$4.9 million and \$5.5 million at September 30, 2013 and December 31, 2012, respectively.

Note 7. Property, Plant and Equipment, Net

Property, plant and equipment, net consists of the following:

	<u>Estimated Useful Lives</u>	<u>September 30, 2013</u>	<u>December 31, 2012</u>
		(in thousands)	
Machinery and equipment	1.5 to 7 years	\$ 17,556	\$ 17,894
Leasehold improvements	3 to 10 years	6,283	8,082
Office equipment, furniture and fixtures	5 to 7 years	1,035	912
Purchased software	1 to 7 years	4,643	3,572
		<u>29,517</u>	<u>30,460</u>
Less: accumulated depreciation		<u>(13,205)</u>	<u>(11,080)</u>
		<u>\$ 16,312</u>	<u>\$ 19,380</u>

During the quarter ended September 30, 2013, we ceased certain development activities performed in our Australian facility, and relocated those activities to the United States. We sold a portion of the fixed assets at our Australian facility while others were written-off upon their discontinued use. The aggregate loss on disposal of fixed assets sold or written-off in the third quarter of 2013 in connection with this action was \$0.5 million. This amount is included in research and development expenses on our condensed consolidated statements of operations.

Note 8. Goodwill and Intangible Assets, Net

In August 2012, we acquired World Heart and recorded \$1.2 million of goodwill. Goodwill is not amortized but will be reviewed for impairment on an annual basis starting in the fourth quarter of 2013 or sooner if indicators of impairment arise.

The gross carrying amount of amortizable intangible assets and the related accumulated amortization for intangible assets are as follows:

	<u>September 30, 2013</u>		<u>December 31, 2012</u>	
	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>
	(in thousands)			
Patents	\$ 6,449	\$ (981)	\$ 5,865	\$ (606)

Patents are being amortized using the straight-line method over their estimated useful lives, which range from 8 to 16 years. Amortization expense for the three months ended September 30, 2013 and 2012 was approximately \$129,000 and \$43,000, respectively. Amortization expense for the nine months ended September 30, 2013 and 2012 was approximately \$375,000 and \$123,000, respectively.

We recognized approximately \$2.5 million of in-process research and development in connection with our acquisition of World Heart in August 2012. In-process research and development has an indefinite life. At the time the economic life becomes determinable (upon project completion or abandonment) the amount will be amortized over its expected remaining life.

Note 9. Other Accrued Liabilities

Other accrued liabilities consist of the following:

	September 30, 2013	December 31, 2012
	(in thousands)	
Accrued payroll and other employee costs	\$ 9,240	\$ 8,818
Accrued material purchases	3,495	5,628
Accrued professional fees	3,037	1,340
Accrued research and development costs	2,071	3,132
Accrued interest payable	1,482	211
Accrued VAT	2,253	1,212
Other accrued expenses	4,116	1,679
	<u>\$ 25,694</u>	<u>\$ 22,020</u>

Accrued payroll and other employee costs included estimated year-end employee bonuses of approximately \$4.6 million and \$5.9 million at September 30, 2013 and December 31, 2012, respectively.

Note 10. Debt

On December 15, 2010, we completed the sale of 3.5% convertible senior notes due 2017 (the "Convertible Notes") for an aggregate principal amount of \$143.75 million pursuant to the terms of an Indenture dated December 15, 2010 (the "Indenture"). The Convertible Notes are the senior unsecured obligations of the Company. The Convertible Notes bear interest at a rate of 3.5% per annum, payable semi-annually in arrears on June 15 and December 15 of each year. The Convertible Notes will mature on December 15, 2017, unless earlier repurchased by us or converted.

The Convertible Notes offering was completed pursuant to a prospectus supplement, dated December 9, 2010, to a shelf registration statement on Form S-3 that was previously filed with the SEC and which was declared effective on December 9, 2010.

The Convertible Notes will be convertible at an initial conversion rate of 10 shares of our common stock per \$1,000 principal amount of Convertible Notes, which corresponds to an initial conversion price of \$100.00 per share of our common stock. The conversion rate is subject to adjustment from time to time upon the occurrence of certain events.

Prior to June 15, 2017, holders may convert their Convertible Notes at their option only upon satisfaction of one or more of the conditions specified in the Indenture relating to the (i) sale price of our common stock, (ii) the trading price per \$1,000 principal amount of Convertible Notes or (iii) specified corporate events. As of the date of this report, none of the events that would allow holders to convert their Convertible Notes have occurred. On or after June 15, 2017, until the close of business of the business day immediately preceding the date the Convertible Notes mature, holders may convert their Convertible Notes at any time, regardless of whether any of the foregoing conditions have been met. Upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock or a combination thereof, at our election.

We may not redeem the Convertible Notes prior to maturity. Holders of the Convertible Notes may require us to purchase for cash all or a part of their Convertible Notes at a repurchase price equal to 100% of the principal amount of the Convertible Notes to be repurchased, plus accrued and unpaid interest, upon the occurrence of certain fundamental changes (as defined in the Indenture) involving the Company. The Indenture does not contain any financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our subsidiaries.

The Indenture contains customary terms and nonfinancial covenants and defines events of default. If an event of default (other than certain events of bankruptcy, insolvency or reorganization) involving the Company occurs and is continuing, the Trustee (by notice to the Company) or the holders of at least 25% in principal amount of the outstanding Convertible Notes (by notice to the Company and the Trustee) may declare 100% of the principal of and accrued and unpaid interest, if any, on all the Convertible Notes to be due and payable. In case of certain events of bankruptcy, insolvency or reorganization, involving the Company, 100% of the principal of and accrued and unpaid interest on the Convertible Notes will automatically become due and payable. Notwithstanding the foregoing, the Indenture provides that, to the extent we elect, the sole remedy for an event of default relating to certain failures by us to comply with certain reporting covenants in the Indenture consists exclusively of the right to receive additional interest on the Convertible Notes.

In accordance with FASB ASC 470-20, *Debt with Conversion and Other Options*, which applies to certain convertible debt instruments that may be settled in cash or other assets, or partially in cash, upon conversion, we recorded the long-term debt and equity components on our Convertible Notes separately on the issuance date. The amount recorded for long-term debt was determined by measuring the fair value of a similar liability that does not have an associated equity component. The measurement of fair value required the Company to make estimates and assumptions to determine the present value of the cash flows of the Convertible Notes, absent the conversion feature. This treatment increased interest expense associated with our Convertible Notes by adding a non-cash component to interest expense in the form of amortization of a debt discount calculated based on the difference between the 3.5% cash coupon rate and the effective interest rate on debt borrowing of approximately 12.5%. The discount is being amortized to interest expense through the December 15, 2017 maturity date of the Convertible Notes using the effective interest method and is included in interest expense on our condensed consolidated statements of operations. Additionally, we allocated the costs related to issuance of the Convertible Notes on the same percentage as the long-term debt and equity components, such that a portion of the costs is allocated to the long-term debt component and the equity component included in additional paid-in capital. The portion of the costs allocated to the long-term debt component is presented as deferred financing costs, net on our condensed consolidated balance sheets. These deferred financing costs are also being amortized to interest expense through the December 15, 2017 maturity date of the Convertible Notes using the effective interest method and the amortization is included in interest expense on our condensed consolidated statements of operations.

The Convertible Notes and the equity component, which is recorded in additional paid-in-capital, consisted of the following:

	September 30, 2013	December 31, 2012
	(in thousands)	
Principal amount	\$ 143,750	\$ 143,750
Unamortized discount	(38,405)	(43,435)
Net carrying amount	<u>\$ 105,345</u>	<u>\$ 100,315</u>
Equity component	<u>\$ 55,038</u>	<u>\$ 55,038</u>

Based on the initial conversion rate of 10 shares of our common stock per \$1,000 principal amount of Convertible Notes, which corresponds to an initial conversion price of \$100.00 per share of our common stock, the number of shares issuable upon conversion of the Convertible Notes is 1,437,500. The value of these shares, based on the closing price of our common stock on September 30, 2013 of \$73.19 per share, was approximately \$105.2 million. The fair value of our Convertible Notes as presented in Note 4 was \$160.3 million at September 30, 2013.

Interest expense related to the Convertible Notes consisted of interest due on the principal amount, amortization of the discount and amortization of the portion of the deferred financing costs allocated to the long-term debt component. For the three and nine months ended September 30, 2013 and 2012, interest expense related to the Convertible Notes was as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
	(in thousands)			
Stated amount at 3.5% coupon rate	\$ 1,258	\$ 1,258	\$3,774	\$3,774
Amortization of discount	1,727	1,532	5,030	4,460
Amortization of deferred financing costs	93	82	270	239
	<u>\$ 3,078</u>	<u>\$ 2,872</u>	<u>\$9,074</u>	<u>\$8,473</u>

Note 11. Stockholders' Equity

On March 12, 2013, we entered into an Underwriting Agreement (the "Underwriting Agreement") with J.P. Morgan Securities LLC, as representative of the several underwriters named in the Underwriting Agreement (the "Underwriters"), pursuant to which we agreed to sell and the Underwriters agreed to purchase, subject to and upon terms and conditions set forth therein, an aggregate of 1,500,000 shares of our common stock at a net sales price of \$81.9114 per share (the public offering price of \$86.45 per share minus the underwriting discount). We also granted the Underwriters an option to purchase 225,000 additional shares of our common stock at the public offering price less the underwriting discount, which the Underwriters exercised in full on March 13, 2013. The closing of the offering occurred on March 18, 2013. After fees and related expenses, net proceeds from the offering were approximately \$141.0 million.

The offering was completed pursuant to a prospectus supplement, dated March 12, 2013, to a shelf registration statement on Form S-3 that was previously filed with the SEC and which was declared effective on December 9, 2010. This shelf registration statement allows us to offer and sell from time to time, in one or more series or issuances and on terms that we determine at the time of the offering, any combination and amount of the securities described in the prospectus contained in the registration statement.

In the nine months ended September 30, 2013, we issued an aggregate of 119,654 shares of our common stock upon the exercise of stock options and an aggregate of 31,676 shares of our common stock upon the vesting of restricted stock units.

In the nine months ended September 30, 2012, we issued 82,532 shares of our common stock in connection with the acquisition of World Heart. We also issued an aggregate of 65,808 shares of our common stock upon the exercise of stock options and an aggregate of 160,830 shares of our common stock upon the vesting of restricted stock units.

Note 12. Share-Based Compensation

We recognize share-based compensation expense related to our stock options and restricted stock units ("RSUs") based on the estimated fair value of the awards on the date of the grant, net of estimated forfeitures, using an accelerated accrual method over the vesting period. Vesting of share-based awards issued with performance-based vesting criteria must be probable before we begin recording share-based compensation expense. At each reporting period, we review the likelihood that these awards will vest and if vesting is deemed probable, we begin to recognize compensation expense at that time. If ultimately performance goals are not met, for any awards where vesting was previously deemed probable, previously recognized compensation expense will be reversed.

We allocate share-based compensation expense to cost of revenue, selling, general and administrative expense and research and development expense based on the award holder's employment function. For the three and nine months ended September 30, 2013 and 2012, we recorded share-based compensation expense as follows:

	Three Months Ended		Nine Months Ended	
	September 30,	September 30,	September 30,	September 30,
	2013	2012	2013	2012
	(In thousands)			
Cost of revenue	\$ 828	\$ 698	\$ 1,970	\$ 2,451
Selling, general and administrative	3,951	2,746	9,169	8,234
Research and development	2,286	1,449	5,303	4,262
	<u>\$ 7,065</u>	<u>\$ 4,893</u>	<u>\$16,442</u>	<u>\$14,947</u>

The increase in share-based compensation expense for the three and nine months ended September 30, 2013, compared to the same periods of 2012, is primarily due to a reduction in our estimated forfeiture rate in the third quarter of 2013.

Deferred tax benefits attributed to our share-based compensation expense are not recognized in the accompanying condensed consolidated financial statements because we are in a net operating loss position and a full valuation allowance is maintained for all net deferred tax assets. We receive a tax deduction for certain stock option exercises during the period the options are exercised, and for the vesting of restricted stock units during the period the restricted stock units vest. For stock options, the amount of the tax deduction is generally the excess of the fair market value of our shares of common stock over the exercise price of the stock options at the date of exercise. For restricted stock units, the amount of the tax deduction is generally the fair market value of our shares of common stock at the vesting date. Excess tax benefits are not recognized in the accompanying condensed consolidated financial statements because we are in a net operating loss position and we do not currently realize a benefit from the deduction.

Equity Plans

We have issued share-based awards to employees, non-executive directors and outside consultants through various approved plans and outside of any formal plan. New shares are issued upon the exercise of share-based awards.

Upon receipt of stockholder approval on May 31, 2012, we adopted the HeartWare International, Inc. 2012 Incentive Award Plan ("2012 Plan"). The 2012 Plan provides for the grant of incentive stock options, non-qualified stock options, restricted stock, restricted stock units, performance awards, dividend equivalent rights, deferred stock, deferred stock units, stock payments and stock appreciation rights (collectively referred to as "Awards"), to our directors, employees and consultants. Under the terms of the 2012 Plan, the total number of shares of our common stock initially reserved for issuance under Awards is 1,375,000, provided that the total number of shares of our common stock that may be issued pursuant to "Full Value Awards" (Awards other than options, SARs or other Awards for which the holder pays the intrinsic value existing as of the date of grant whether directly or by forgoing a right to receive a payment from the Company) is 1,275,000. As of September 30, 2013, 6,638 shares have been issued upon vesting of Awards issued under the 2012 Plan and Awards with respect to 301,812 shares were issued and outstanding under the 2012 Plan. Subsequent to adoption of the 2012 Plan, no new Awards will be granted under our prior plans. Any outstanding Awards under the prior plans will continue to be subject to the terms and conditions of the plan under which they were granted.

Stock Options

Each option allows the holder to subscribe for and be issued one share of our common stock at a specified price, which is generally the quoted market price of our common stock on the date the option is issued. Options generally vest on a pro-rata basis on each anniversary of the issuance date within four years of the date the option is issued. Options may be exercised after they have vested and prior to the specified expiry date provided applicable exercise conditions are met, if any. The expiry date can be for periods of up to ten years from the date the option is issued.

The fair value of each option is estimated on the date of grant using the Black-Scholes option pricing model based on the assumptions established at that time. No options were issued in the three months ended September 30, 2013 and 2012. The following table includes the weighted average assumptions used for options issued in the nine months ended September 30, 2013 and 2012.

	Nine Months Ended September 30,	
	2013	2012
Dividend yield	0%	0%
Expected volatility	40.00%	57.00%
Risk-free interest rate	1.15%	1.00%
Estimated holding period (years)	6.25	6.25

Information related to options granted under all of our plans at September 30, 2013 and activity in the nine months then ended is as follows (certain amounts in U.S.\$ were converted from AU\$ at the then period-end spot rate):

	Number of Options (in thousands)	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2012	291	\$ 36.70		
Granted	7	95.05		
Exercised	(120)	28.23		
Forfeited	—	—		
Expired	—	—		
Outstanding at September 30, 2013	178	\$ 40.88	4.65	\$ 6,032
Exercisable at September 30, 2013	150	\$ 34.71	4.01	\$ 5,806

The aggregate intrinsic values at September 30, 2013 noted in the table above represent the number of in-the-money options outstanding or exercisable multiplied by the closing price of our common stock traded on NASDAQ less the weighted average exercise price at period end.

The weighted average grant date fair value per share of options issued in the nine months ended September 30, 2013 and 2012 was \$38.51 and \$43.83 per share, respectively.

The total intrinsic value of options exercised in the nine months ended September 30, 2013 and 2012 was approximately \$7.7 million and \$3.3 million, respectively. Cash received from options exercised in the nine months ended September 30, 2013 and 2012 was approximately \$3.4 million and \$2.3 million, respectively.

At September 30, 2013, there was approximately \$0.4 million of unrecognized compensation expense, net of estimated forfeitures, related to non-vested options. This expense is expected to be recognized over a weighted average period of 1.3 years.

Restricted Stock Units

Each RSU represents a contingent right to receive one share of our common stock. RSUs generally vest on a pro-rata basis on each anniversary of the issuance date over three or four years or vest in accordance with performance-based criteria. The RSUs with performance-based vesting criteria vest in one or more tranches contingent upon the achievement of pre-determined milestones related to the development of our products, the achievement of certain prescribed clinical and regulatory objectives, the achievement of specific financial performance measures or similar multi-year metrics. There is no consideration payable on the vesting or exercise of RSUs issued under the plans. Upon vesting, the RSUs are exercised automatically and settled in shares of our common stock.

Information related to RSUs at September 30, 2013 and activity in the nine months then ended is as follows:

	Number of Units (in thousands)	Weighted Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2012	547		
Granted	108		
Vested/Exercised	(31)		
Forfeited	(15)		
Expired	—		
Outstanding at September 30, 2013	<u>609</u>	1.63	\$ 44,560
Exercisable at September 30, 2013	<u>—</u>	—	\$ —

The aggregate intrinsic value at September 30, 2013 noted in the table above represents the closing price of our common stock traded on NASDAQ multiplied by the number of RSUs outstanding.

At September 30, 2013, 16,700 of the RSUs outstanding are subject to performance-based vesting criteria as described above.

The total intrinsic value of RSUs vested in the nine months ended September 30, 2013 and 2012 was approximately \$2.9 million and \$14.3 million, respectively.

The fair value of each RSU award equals the closing price of our common stock on the date of grant. The weighted average grant date fair value per share of RSUs granted in the nine months ended September 30, 2013 and 2012 was \$90.50 and \$85.85, respectively.

At September 30, 2013, we had approximately \$21.5 million of unrecognized compensation expense related to non-vested RSU awards, net of estimated forfeitures. This expense is expected to be recognized over a weighted average period of 1.4 years.

Note 13. Net Loss Per Common Share

Basic net loss per common share is computed by dividing net loss for the period by the weighted-average number of common shares outstanding during the period. Diluted net loss per common share adjusts basic net loss per share for the dilutive effects of convertible securities, share-based awards and other potentially dilutive instruments only in the periods in which the effect is dilutive. Due to our net loss for all periods presented, all potentially dilutive instruments were excluded because their inclusion would have been anti-dilutive. The following instruments have been excluded from the calculation of diluted net loss per share, as their effect would be anti-dilutive.

	Three and Nine Months Ended September 30,	
	2013	2012
	(in thousands)	
Common shares issuable upon:		
Conversion of convertible senior notes	1,438	1,438
Exercise or vesting of share-based awards	787	852

Note 14. Business Segment, Geographic Areas and Major Customers

For financial reporting purposes, we have one reportable segment which designs, manufactures and markets medical devices for the treatment of advanced heart failure. Products are sold to customers located in the United States through our clinical trials and as commercial products, as commercial products to customers in Europe and under special access in other countries. Product sales attributed to a country or region are based on the location of the customer to whom the products are sold. Long-lived assets are primarily held in the United States.

Product sales by geographic location were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
	(in thousands)			
United States	\$28,166	\$ 3,627	\$ 79,422	\$14,264
Germany	14,951	9,756	40,984	29,570
International, excluding Germany	11,683	9,479	34,469	34,427
	<u>\$54,800</u>	<u>\$22,862</u>	<u>\$154,875</u>	<u>\$78,261</u>

The percentage of our revenue generated in the U.S. increased in 2013 as compared to 2012 due to receipt in November 2012 of FDA approval to sell the HeartWare System commercially in the U.S. As a significant portion of our revenue is generated outside of the U.S., we are dependent on favorable economic and regulatory environments for our products in Europe and other countries outside of the U.S. For the three and nine months ended September 30, 2013, no customer exceeded 10% of product sales individually.

Note 15. Commitments and Contingencies

At September 30, 2013, we had purchase order commitments of approximately \$47.7 million related to product costs, supplies, services and property, plant and equipment purchases. Many of our materials and supplies require long lead times. Our purchase order commitments reflect materials that may be received up to one year from the date of order.

In addition to the above, we have entered into employment agreements with all of our executive officers. These contracts do not have a fixed term and are constructed on an at-will basis. Some of these contracts provide executives with the right to receive certain additional payments and benefits if their employment is terminated including after a change of control, as defined in these agreements.

From time to time we invest in certain development stage entities in connection with research activities. Certain contingent milestone payments in connection with these arrangements have not been accrued in the accompanying condensed consolidated financial statements as the amounts are indeterminate at this time.

The taxation and customs requirements, together with other applicable laws and regulations of certain foreign jurisdictions, can be inherently complex and subject to differing interpretation by local authorities. We are subject to the risk that either we have misinterpreted applicable laws and regulations, or that foreign authorities may take inconsistent, unclear or changing positions on local law, customs practices or rules. In the event that we have misinterpreted any of the above, or that foreign authorities take positions contrary to ours, we may incur liabilities that may differ materially from the amounts accrued in the accompanying condensed consolidated financial statements.

Litigation

From time to time we may be involved in litigation or other contingencies arising in the ordinary course of business. Based on the information presently available, management believes there are no contingencies, claims or actions, pending or threatened, the ultimate resolution of which will have a material adverse effect on our financial position, liquidity or result of operations.

In accordance with FASB ASC 450, *Contingencies*, we accrue loss contingencies including costs of settlement, damages and defense related to litigation to the extent they are probable and reasonably estimable. Otherwise, we expense these costs as incurred. If the estimate of a probable loss is a range and no amount within the range is more likely, we accrue the minimum amount of the range.

Note 16. Subsequent Events

We have evaluated events and transactions that occurred subsequent to September 30, 2013 through the date the financial statements were issued, for potential recognition or disclosure in the accompanying condensed consolidated financial statements. Except as disclosed below, we did not identify any events or transactions that should be recognized or disclosed in the accompanying condensed consolidated financial statements.

Strategic Investment

In October 2013, we invested \$10 million in the form of a convertible promissory note (the "Note") in a privately held company that is focused on the development of novel, minimally invasive heart therapies. Principal and interest at a rate equal to 6% per annum is due and payable at maturity. Maturity occurs at the earlier of one year or the occurrence of certain events defined in the Note, including an event of default or a change in control. Principal and interest on the Note are repayable, at the option of the issuer, in cash or shares of the most recently issued series of preferred stock or a comparable newly issued series of preferred stock.

Lease for New Headquarters

On October 17, 2013, we entered into a lease for a new facility in Framingham, Massachusetts that is expected to commence in January 2014. The facility will be used primarily as our corporate headquarters for office and ancillary laboratory purposes including development testing. Under the lease, we will rent approximately 58,000 square feet for an initial seven year period, with an option to renew for a period of fifty seven months, but in no event beyond September 30, 2025. Annual base rent will be approximately \$1.2 million, payable monthly starting ten months after the lease commences. Annual base rent is subject to periodic increases beginning in year four. A security deposit of \$0.3 million was paid in connection with the lease.

ITEM 2: MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read together with our unaudited interim condensed consolidated financial statements and related notes appearing elsewhere in this Quarterly Report on Form 10-Q. Certain abbreviated key terms have the meanings defined elsewhere in this Quarterly Report on Form 10-Q.

Overview

HeartWare is a medical device company that develops, manufactures and markets miniaturized implantable heart pumps, or ventricular assist devices, to treat patients suffering from advanced heart failure.

The HeartWare® System, which includes a ventricular assist device ("VAD"), or blood pump, patient accessories and surgical tools, is designed to provide circulatory support for patients in the advanced stage of heart failure. The core of the HeartWare System is a proprietary continuous flow blood pump, the HVAD® Pump, which is a full-output device capable of pumping up to 10 liters of blood per minute. The HeartWare System is designed to be implanted adjacent to the heart, avoiding the abdominal surgery generally required to implant similar devices.

On November 20, 2012, we received approval from the FDA for the HeartWare System as a bridge to heart transplantation in patients with end-stage heart failure. Concurrent with approval, we commenced a post-approval study ("PAS") to monitor the continued safety and effectiveness of the HeartWare System. The PAS is a registry consisting of 600 patients who receive an HVAD and an additional 600 control patients derived from a contemporaneous group of continuous flow, LVAD implanted patients entered into INTERMACS (Interagency Registry for Mechanically Assisted Circulatory Support).

We also intend to seek an expanded indication for the HeartWare System in the United States. In May 2012, we completed enrollment in our ENDURANCE clinical trial. Designed to enroll up to 450 patients at 50 U.S. hospitals, the non-inferiority study is atocpage randomized, controlled, unblinded, multi-center clinical trial to evaluate the use of the HeartWare System as a destination therapy in advanced heart failure patients. The study population was selected from patients with end-stage heart failure who have not responded to standard medical management and who are ineligible for heart transplantation. Patients in the study were randomly selected to receive either the HeartWare System or, as part of a control group, an alternative VAD approved by the FDA for destination therapy, in a 2:1 ratio. Each patient who received the HeartWare System or control VAD will be followed to the primary endpoint of two years, with a subsequent follow-up period extending to five years post-implant.

In August 2013, the FDA approved an investigational device exemption supplement that allows us to commence enrollment in an additional patient cohort for ENDURANCE. In this supplemental cohort, we will enroll up to 286 patients receiving the HeartWare System, as well as up to an additional 143 control patients using a randomization scheme consistent with the ENDURANCE protocol. Patients will be followed for 12 months after implant. We intend to incorporate the data from both this new cohort and ENDURANCE into an anticipated Pre-Market Approval Application seeking approval of the HeartWare System for the destination therapy indication. The protocol for this cohort is designed to assess the benefits of adhering to more regular monitoring and management of patient blood pressure. Patient enrollment has commenced at multiple sites and can commence at the remaining 50 centers participating in the ENDURANCE clinical trial, following Institutional Review Board approvals at the centers.

Beyond the HeartWare System, we are also evaluating our new miniaturized device, known as the MVAD® System. The MVAD System utilizes the same technology platform as the HeartWare System but adopts an axial flow, rather than a centrifugal flow, configuration. The MVAD Pump is less than one-half the size of the HVAD Pump. The MVAD platform has been designed to allow for multiple configurations and surgical placements in order to reduce surgical invasiveness while improving clinical outcomes. We currently expect to enroll our first patient in an MVAD international study in early 2014.

During the quarter ended September 30, 2013, we generated positive operating cash flows of approximately \$2.8 million as a result of our continued revenue growth relative to costs and expenses, and improved use of working capital to support our operations. This marked the first time in our history that positive operating cash flows were attained; however, we do not anticipate that we will sustain positive operating cash flows on a quarterly basis in the near future due to continued ongoing investments in sales, general and administrative and research and development activities as well as the timing and payment of interest on our convertible debt.

We began generating revenue from our products in August 2008 and have incurred net losses in each year since our inception. We expect our losses to continue as we continue to develop commercial markets, expand our research and development into next generation products, including the MVAD System, and related accessories and support on-going and new clinical trial activity.

We have financed our operations primarily through the issuance of shares of our common stock and the issuance of convertible notes. Most recently, in March 2013, we completed a public offering of 1,725,000 shares of our common stock, including the underwriters' exercise of their over-allotment option to purchase 225,000 shares, at an offering price of \$86.45 per share for aggregate gross proceeds of approximately \$149.1 million. After fees and related expenses, net proceeds from the offering were approximately \$141.0 million.

We are headquartered in Framingham, Massachusetts. We have facilities in Miami Lakes, Florida and Hannover, Germany.

Critical Accounting Policies and Estimates

We prepare our financial statements in accordance with accounting principles generally accepted in the United States. We are required to adopt various accounting policies and to make estimates and assumptions in preparing our financial statements that affect the reported amounts of our assets, liabilities, revenue and expenses. On an ongoing basis, we evaluate our estimates and assumptions. We base our estimates on our historical experience to the extent practicable and on various other assumptions that we believe are reasonable under the circumstances and at the time they are made. If our assumptions prove inaccurate or if our future results are not consistent with our historical experience, we may be required to make adjustments in our policies that affect our reported results. Our significant accounting policies are disclosed in Note 3 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2012 ("2012 Annual Report on Form 10-K") filed with the Securities and Exchange Commission on February 27, 2013. During the nine months ended September 30, 2013, there were no significant changes to any of our significant accounting policies.

Our most critical accounting policies and estimates include revenue recognition, inventory capitalization and valuation, accounting for share-based compensation, measurement of fair value, and the valuation of tax assets and liabilities. We also have other key accounting policies that are less subjective and, therefore, their application is less subject to variations that would have a material impact on our reported results of operations. There have been no material changes to our critical accounting policies and estimates from the information provided in Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations*, included in our 2012 Annual Report on Form 10-K.

Results of Operations

Three and nine months ended September 30, 2013 and 2012

Revenue, net

In November 2012, we received approval from the FDA for the HeartWare System as a bridge to heart transplantation in patients with end-stage heart failure. This approval resulted in substantially increased year-to-date sales in the United States compared to year-to-date fiscal 2012 sales which were derived from a mix of clinical trial activities in the United States and ongoing commercial sales of our HVAD system internationally.

During the three and nine months ended September 30, 2013, domestic revenue comprised approximately 51% of our net revenue in both periods compared to approximately 16% and 18% in the three and nine months ended September 30, 2012, respectively.

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2013	2012	Change	2013	2012	Change
	(in thousands)			(in thousands)		
Revenue, net	\$54,800	\$22,862	140%	\$154,875	\$78,261	98%

During the three months ended September 30, 2013, our U.S. revenue increased approximately \$24.5 million, or 677%, to \$28.2 million compared to U.S. revenue of approximately \$3.6 million in the three months ended September 30, 2012. A total of 262 HVAD pumps were sold in the U.S. during the quarter compared to 42 pumps sold in the same period in 2012. International revenue increased during the quarter by approximately \$7.3 million, or 38%, to \$26.6 million compared to international revenue of approximately \$19.3 million in the three months ended September 30, 2012. A total of 287 HVAD pumps were sold internationally during the quarter compared to 214 pumps sold internationally in the same period in 2012.

During the nine months ended September 30, 2013, our U.S. revenue increased approximately \$65.2 million, or 457%, to \$79.4 million compared to U.S. revenue of approximately \$14.3 million in the nine months ended September 30, 2012. A total of 735 HVAD pumps were sold in the U.S. during the nine month period compared to 158 pumps sold in the same period in 2012. International revenue increased during the nine month period by approximately \$11.5 million, or 18%, to \$75.5 million compared to international revenue of approximately \$64.0 million in the nine months ended September 30, 2012. A total of 819 HVAD pumps were sold internationally year-to-date compared to 714 pumps sold internationally in the year-to-date period in 2012.

Changes in foreign currency exchange rates favorably impacted net revenue by approximately \$1.3 million, or 5.7%, and \$1.4 million, or 1.7%, in the three and nine months ended September 30, 2013, respectively, compared to the three and nine months ended September 30, 2012. During the three and nine months ended September 30, 2013, approximately 46% and 45%, respectively, of our net revenue was denominated in foreign currencies including principally the Euro and British pound. Movements in foreign currency exchange rates have had an effect on our reported revenue amounts in the past and could have a significant favorable or unfavorable impact on our reported revenue amounts in the future.

We expect to continue to generate and grow commercial revenue from product sales as we further expand our sales and marketing efforts on a global basis, including commercial sales in the U.S. following our recent FDA approval of the HeartWare System for bridge-to-transplant. Future product sales are dependent on many factors, including perception of product performance and market acceptance among physicians, patients, health care payers and the medical community as well as our capacity to meet customer demand by manufacturing sufficient quantities of our products.

Cost of Revenue

Cost of revenue includes costs associated with manufacturing and distributing our products and consists of direct materials, labor and overhead expenses allocated to the manufacturing process, provisions for excess or obsolete inventory, and shipping costs. Cost of revenue totaled approximately \$19.5 million and \$10.9 million in the three months ended September 30, 2013 and 2012, respectively. Cost of revenue totaled approximately \$57.2 million and \$34.4 million in the nine months ended September 30, 2013 and 2012, respectively.

Gross profit and gross margin percentage are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2013	2012	2013	2012
	(in thousands)		(in thousands)	
Gross profit	\$35,271	\$11,937	\$97,700	\$43,843
Gross margin %	64.4%	52.2%	63.1%	56.0%

Gross margin percentage for the three and nine months ended September 30, 2013 expanded compared to the same periods in 2012 by 12.2% and 7.1%, respectively. The increase was primarily a result of production efficiencies resulting from fixed overhead costs spread over a greater number of units produced and sold, and to a lesser extent an increase in the average per unit selling price in 2013 attributable to the introduction of commercial product in the United States during the fourth quarter of 2012. Compared to the same periods in the prior year higher unit sales prices contributed 2.6% and 2.4% of the gross margin increase for the three and nine months ended September 30, 2013, respectively, with the balance of the increase related to the described production efficiencies.

Selling, General and Administrative

Selling, general and administrative expenses include costs associated with selling and marketing our products and the general corporate administration of the Company. These costs are primarily related to salaries and wages and related employee costs, travel, marketing, external consultants and contractors, legal and accounting fees and general infrastructure costs, and include all operating costs not associated with or otherwise classified as research and development costs or cost of revenue.

	<u>Three Months Ended September 30,</u>			<u>Nine Months Ended September 30,</u>		
	<u>2013</u>	<u>2012</u>	<u>Change</u>	<u>2013</u>	<u>2012</u>	<u>Change</u>
	<u>(in thousands)</u>			<u>(in thousands)</u>		
Total selling, general and administrative expenses	\$ 19,844	\$ 13,768	44%	\$ 53,548	\$ 40,687	32%
% of operating expenses	43%	39%		43%	40%	

The increase of \$6.1 million for the three months ended September 30, 2013 as compared to the three months ended September 30, 2012 resulted primarily from commercial expansion and included \$2.1 million of salaries and related costs associated with headcount growth, \$1.2 million of non-cash share-based compensation expense, primarily due to a reduction in our estimated forfeiture rate, and \$1.7 million of increased travel, conference, tradeshows and other marketing expenditures. In addition, all other administrative expenses including professional fees increased by approximately \$0.4 million and we incurred excise taxes of \$0.7 million as a result of the Reconciliation Act (discussed below).

The increase of \$12.9 million for the nine months ended September 30, 2013 as compared to the nine months ended September 30, 2012 resulted primarily from commercial expansion and included \$5.6 million of salaries and related costs associated with headcount growth, \$0.9 million of non-cash share-based compensation expense, primarily due to a reduction in our estimated forfeiture rate, and \$4.0 million of increased travel, conference, tradeshows and other marketing expenditures. In addition, all other administrative expenses including professional fees increased by approximately \$0.6 million and we incurred excise taxes of \$1.8 million as a result of the Reconciliation Act (discussed below). Selling, general and administrative expenses for the nine months ended September 30, 2012 were partially offset by an insurance recovery of \$0.8 million related to the settlement of litigation.

In 2010, the Patient Protection and Affordable Care Act (the "PPACA") and the Health Care and Education Reconciliation Act of 2010 (the "Reconciliation Act") were signed into law. Among other things, the PPACA and the Reconciliation Act, when taken together, impose a 2.3% excise tax on the U.S. sales of certain medical devices, including our devices, which became effective January 1, 2013. We have included this tax expense in selling, general and administrative expenses on our condensed consolidated statements of operations. We have not invoiced our customers for this tax as a separate charge, and the tax is not included as an element of revenue. The statutory rate of the medical device excise tax is 2.3% of revenue on initial sales of finished medical products sold in the United States.

We expect our selling, general and administrative expenses to continue to increase in 2013 compared to 2012 as we continue to expand our sales and distribution capabilities in an effort to increase market penetration on a global basis as well as enhance our administrative capabilities to support our overall corporate growth.

Research and Development

Research and development expenses are the direct and indirect costs associated with developing our products prior to commercialization, including the costs of operating clinical trials, and are expensed as incurred. These expenses fluctuate based on project level activity and consist primarily of salaries and wages and related employee costs of our research and development, clinical and regulatory staffs, external research and development costs, and materials and expenses associated with clinical trials. Additional costs include travel, facilities and overhead allocations.

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2013	2012	Change	2013	2012	Change
	(in thousands)			(in thousands)		
Total research and development expenses	\$ 25,930	\$ 21,379	21%	\$ 72,201	\$ 61,392	18%
% of operating expenses	57%	61%		57%	60%	

The increase in research and development expenses for the three and nine months ended September 30, 2013 as compared to the same periods in 2012 was primarily due to an increase in spending on product pipeline initiatives such as development of the PAL controller and the MVAD Pump as well as increased expenditures to support HVAD and associated peripheral products on the market.

The \$4.6 million increase for the three months ended September 30, 2013 was primarily due to a \$3.3 million increase in development project costs, including consumables, outside engineering, consultants and contractors. We also experienced a \$1.8 million increase in salaries and related costs associated with headcount growth, and an increase in non-cash share-based compensation of \$0.8 million primarily due to a reduction in our estimated forfeiture rate. These increases were partially offset by a decrease in costs related to clinical trials of \$2.5 million.

The \$10.8 million increase for the nine months ended September 30, 2013 was primarily due to a \$6.9 million increase in development project costs, including consumables, outside engineering, consultants and contractors. We also experienced a \$5.0 million increase in salaries and related costs associated with headcount growth, and an increase in non-cash share-based compensation of \$1.0 million primarily due to a reduction in our estimated forfeiture rate. These increases were partially offset by a decrease in costs related to clinical trials of \$4.7 million.

During the quarter ended September 30, 2013, we ceased certain development activities performed in our Australian facility, and relocated those activities to the United States. We sold a portion of the fixed assets at our Australian facility while others were written-off upon their discontinued use. The aggregate expense related to fixed assets sold or written-off in the third quarter of 2013 in connection with this action was \$0.5 million and is included in research and development expenses on our condensed consolidated statements of operations.

We expect that research and development expenses will continue to represent a significant portion of our operating expenses for the foreseeable future as we continue to incur substantial development costs related to our next generation products, including PAL, MVAD and certain early research initiatives, new clinical trial expenses related to clinical trials for HVAD in new markets and expanded indications and MVAD both in Europe and the United States, as well as ongoing clinical trial expenses associated with bridge-to-transplant post-approval study requirements and ongoing patient follow-up related to the ENDURANCE clinical trial.

Foreign Exchange

We generate a substantial portion of our revenue and collect receivables in foreign currencies. Fluctuations in the exchange rate of the U.S. dollar against the Euro, British Pound and Australian dollar can result in foreign currency exchange gains and losses that may significantly affect our financial results. Continued fluctuation of these exchange rates could result in financial results that are not comparable from quarter to quarter.

In the three months ended September 30, 2013, our net foreign exchange gains totaled approximately \$2.1 million compared to net gains of approximately \$1.2 million in the same period of 2012. In the nine months ended September 30, 2013, our net foreign exchange losses totaled approximately \$0.4 million compared to net gains of approximately \$0.1 million in the same period of 2012. In 2013 and 2012, the majority of our realized and unrealized foreign exchange gains and losses resulted from the settlement of certain balance sheet accounts, primarily accounts receivable that were denominated in foreign currencies, and the remeasurement to U.S. dollars at period end of certain balance sheet accounts, denominated in foreign currencies, primarily the Euro. We expect to continue to realize foreign exchange gains and losses for the foreseeable future as a significant portion of our sales is denominated in foreign currencies. We do not currently utilize foreign currency contracts to manage foreign exchange risks.

Interest Expense

Interest expense in 2013 and 2012 primarily consists of interest incurred on the principal amount of our convertible senior notes issued in December 2010, amortization of the related discount and amortization of the portion of the deferred financing costs allocated to the debt component. The convertible senior notes bear interest at a rate of 3.5% per annum. The discount on the convertible senior notes and the deferred financing costs are being amortized to interest expense through the December 15, 2017 maturity date of the convertible senior notes using the effective interest method.

In the three months ended September 30, 2013, interest expense was approximately \$3.1 million, which included \$1.3 million of interest incurred on the principal amount of the convertible notes at the 3.5% coupon rate and \$1.8 million of non-cash amortization of the discount and deferred financing costs. In the three months ended September 30, 2012, interest expense was approximately \$2.9 million, which included \$1.3 million of interest incurred on the principal amount of the convertible notes at the 3.5% coupon rate and \$1.6 million of non-cash amortization of the discount and deferred financing costs.

In the nine months ended September 30, 2013, interest expense was approximately \$9.1 million, which included \$3.8 million of interest incurred on the principal amount of the convertible notes at the 3.5% coupon rate and \$5.3 million of non-cash amortization of the discount and deferred financing costs. In the nine months ended September 30, 2012, interest expense was approximately \$8.5 million, which included \$3.8 million of interest incurred on the principal amount of the convertible notes at the 3.5% coupon rate and \$4.7 million of non-cash amortization of the discount and deferred financing costs.

Investment Income, net

Investment income is primarily derived from investments and cash and short-term deposit accounts held in the U.S. The amortization of premium on our investments is also included in investment income, net. Investment income, net was approximately \$0.05 million and \$0.2 million in the three and nine months ended September 30, 2013, respectively, compared to \$0.03 million and \$0.2 million in the same periods in the prior year. We ended the third quarter of 2013 with approximately \$225.0 million in cash, cash equivalents and available-for-sale investments, primarily due to our public offering of our common stock completed in March 2013. While we had higher average balances during the third quarter of 2013 and first nine months of 2013 compared to 2012, we continue to experience low interest rates on our deposits and available-for-sale investments.

Income Taxes

We are subject to taxation in the United States and jurisdictions outside of the United States. These jurisdictions have different marginal tax rates. Foreign earnings are considered to be permanently reinvested in operations outside the U.S. and therefore we have not provided for U.S. income taxes on these unrepatriated foreign earnings. We have incurred significant U.S. losses since inception, however, changes in issued capital and share ownership, as well as other factors, may limit our ability to utilize any net operating loss carry-forwards, and therefore a 100% valuation allowance has been recorded against our net deferred tax assets. As of September 30, 2013, we did not have earnings which would be sufficient to allow any portion of our deferred tax assets to be recorded. We intend to monitor closely whether to record a deferred tax asset as we expand the commercialization of our products.

Liquidity and Capital Resources

As of September 30, 2013, our cash and cash equivalents were approximately \$187.9 million as compared to \$85.9 million at December 31, 2012.

Following is a summary of our cash flow activities:

	Nine Months Ended September 30,	
	2013	2012
	(in thousands)	
Net cash used in operating activities	\$ (19,624)	\$ (46,338)
Net cash (used in) provided by investing activities	(22,913)	84,867
Net cash provided by financing activities	144,356	2,316
Effect of exchange rate changes on cash and cash equivalents	166	(219)
Net increase in cash and cash equivalents	<u>\$ 101,985</u>	<u>\$ 40,626</u>

Cash Used in Operating Activities

For the nine months ended September 30, 2013, cash used in operating activities included a net loss of approximately \$37.3 million and non-cash adjustments to net loss totaling approximately \$28.1 million. The net loss is driven by normal operating activities including the sale of the HeartWare System in the U.S. and abroad, increased expenditures on research and development as well as increased administrative costs. Non-cash adjustments include \$16.4 million of share-based compensation, \$5.0 million for the amortization of the discount on our convertible notes and \$5.2 million of depreciation and amortization on long-lived assets. Also included in cash used in operating activities in the nine months ended September 30, 2013 was approximately \$4.8 million in increased trade accounts receivable, \$2.7 million for the payment of trade payables and \$5.6 million for prepaid expenses and other current assets.

For the nine months ended September 30, 2012, cash used in operating activities included a net loss of approximately \$66.6 million and non-cash adjustments to net loss totaling approximately \$24.1 million. Non-cash adjustments include \$14.9 million of share-based compensation, \$4.5 million for the amortization of the discount on our convertible senior notes and \$3.4 million of depreciation and amortization on long-lived assets. Also included in cash used in operating activities in the nine months ended September 30, 2012 is approximately \$2.2 million of changes to working capital including an increase in accounts receivable, \$6.7 million for the purchase and manufacture of inventories and \$1.2 million for prepaid expenses and other current assets. These amounts were partially offset by increases in trade accounts payable of \$4.3 million.

Cash Used in Investing Activities

In the nine months ended September 30, 2013, net cash used by investing activities included \$20.7 million for the purchase (net of maturities) of available-for sale securities, \$2.1 million used to acquire property, plant and equipment and \$0.7 million received upon the sale of certain property, plant and equipment in connection with the closure of our Australian facility. Other investing activities in the nine months ended September 30, 2013 used cash of approximately \$0.9 million.

In the nine months ended September 30, 2012, net cash provided by investing activities included \$86.5 million received upon maturity (net of purchases) of available-for-sale securities, \$3.7 million received upon the acquisition of World Heart, \$4.2 million used to acquire property, plant and equipment and \$0.8 million paid for a security deposit on a facility lease.

Cash Provided by Financing Activities

On March 12, 2013, we entered into an Underwriting Agreement (the "Underwriting Agreement") with J.P. Morgan Securities LLC, as representative of the several underwriters named in the Underwriting Agreement (the "Underwriters"), pursuant to which we agreed to sell and the Underwriters agreed to purchase, subject to and upon terms and conditions set forth therein, an aggregate of 1,500,000 shares of our common stock at a net sales price of \$81.9114 per share (the public offering price of \$86.45 per share minus the underwriting discount). We also granted the Underwriters an option to purchase 225,000 additional shares of our common stock at the public offering price less the underwriting discount, which the Underwriters exercised in full on March 13, 2013. The closing of the offering occurred on March 18, 2013. After fees and related expenses, net proceeds from the offering were approximately \$141.0 million. The offering was completed pursuant to a prospectus supplement, dated March 12, 2013, to a shelf registration statement on Form S-3 that was previously filed with the SEC and which was declared effective on December 9, 2010.

The exercise of stock options in the nine months ended September 30, 2013 and 2012 resulted in cash proceeds of approximately \$3.4 million and \$2.3 million, respectively.

Operating Capital and Capital Expenditure Requirements

We have incurred operating losses to date and anticipate that we will continue to consume cash and incur substantial net losses as we expand our sales and marketing capabilities, develop new products and seek regulatory approvals for expanded indications of the HeartWare System in the U.S. For the remainder of 2013, cash on hand is expected to primarily be used to fund our ongoing operations, including:

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- expanding our sales and marketing capabilities on a global basis;
 - growing market penetration particularly in the U.S.;
 - continued product development, including development of the MVAD Pump and PAL controller, and clinical trials related to expanded indications of the HeartWare System;
 - pre-clinical costs relating to prospective first human implants of the MVAD Pump;
 - regulatory and other compliance functions;
 - expand work in process and finished goods inventory to support ongoing operations;
 - planned investments in infrastructure to support our growth; and
 - general working capital.

Our convertible notes bear interest at a rate of 3.5% per annum, payable semi-annually in arrears on June 15 and December 15 of each year. To date, all interest payments have been paid on a timely basis. Based on the outstanding principal amount of our convertible senior notes at September 30, 2013, the semi-annual interest payment due on December 15, 2013 will be approximately \$2.5 million. This amount is expected to be paid from cash on hand.

We believe cash on hand and investment balances as of September 30, 2013 are sufficient to support our planned operations for at least the next twelve months. At September 30, 2013, approximately \$14.7 million of our cash on hand was held in foreign locations, including Australia, Germany and the United Kingdom. To date, the Company has not had unremitted foreign earnings and has not incurred U.S. federal and state income taxes related to repatriated earnings. As our operations in our foreign subsidiaries grow, we may generate foreign earnings and repatriation of those earnings to the U.S. could result in the levy of U.S. federal and state income taxes.

Because of the numerous risks and uncertainties associated with the development of medical devices we are unable to estimate the exact amounts of capital outlays and operating expenditures necessary to maintain regulatory approvals, fund commercial expansion, and develop and obtain regulatory approvals for new products. Our future capital requirements will depend on many factors, including but not limited to the following:

- commercial acceptance of our products;
- reimbursement of our products by governmental agencies and third party payers;
- costs to manufacture our products;
- expenses required to operate multiple clinical trials;
- further product research and development for next generation products and expanding indications for our products as well as efforts to sustain and implement incremental improvements to existing products;
- expanding our sales and marketing capabilities on a global basis;
- broadening our infrastructure in order to meet the needs of our growing operations;
- expenses related to funding and integrating strategic investments, acquisitions and collaborative arrangements;
- payment of the 2.3% excise tax on gross revenue from the sale of our medical devices in the U.S. imposed by the PPACA;
- payment of our convertible notes on maturity if not converted or repurchased; and
- complying with the requirements related to being a public company in the U.S.

Contractual Obligations

In the nine months ended September 30, 2013, there were no material changes outside the ordinary course of business to our contractual obligations provided in Part II, Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations*, included in our 2012 Annual Report on Form 10-K filed with the SEC on February 27, 2013, except as disclosed below.

On October 17, 2013, we entered into a lease for a new corporate headquarters in Framingham, Massachusetts that is expected to commence in January 2014. The facility will be used primarily as our corporate headquarters for office and ancillary laboratory purposes including development testing. Under the lease, we will rent approximately 58,000 square feet for an initial seven year period, with an option to renew for a period of fifty seven months, but in no event beyond September 30, 2025. Annual base rent will be approximately \$1.2 million, payable monthly starting ten months after the lease commences. Annual base rent is subject to periodic increases beginning in year four. A security deposit of \$0.3 million was paid in connection with the lease.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of changes in the value of market risk sensitive instruments caused by fluctuations in interest rates, foreign exchange rates and commodity prices. Changes in these factors could cause fluctuations in our results of operations and cash flows.

Interest Rate Risk

Our exposure to interest rate risk is currently confined to interest earnings on our cash and cash equivalents that are invested in highly liquid money market funds, short-term time deposits, short-term bank notes and short-term commercial paper. The primary objective of our investment activities is to preserve our capital to fund operations. We also seek to generate reasonable income from our investments without assuming significant risk. We do not presently use derivative financial instruments in our investment portfolio. Our cash and investments policy emphasizes liquidity and preservation of principal over other portfolio considerations.

If interest rates rise, the market value of our investment portfolio may decline, which could result in a loss if we choose or are forced to sell an investment before its scheduled maturity. We do not utilize derivative financial instruments to manage interest rate risks.

Our convertible senior notes do not bear interest rate risk as the notes were issued with a fixed interest rate of 3.5% per annum.

Foreign Currency Rate Fluctuations

We conduct business in foreign countries. For U.S. reporting purposes, we translate all assets and liabilities of our non-U.S. entities at the period-end exchange rate and revenue and expenses at the average exchange rates in effect during the periods. The net effect of these translation adjustments is shown in the accompanying condensed consolidated financial statements as a component of stockholders' equity.

We generate a significant portion of our revenue and collect receivables in foreign currencies. Fluctuations in the exchange rate of the U.S. dollar against major foreign currencies, including the Euro, British Pound and Australian dollar, can result in foreign currency exchange gains and losses that may significantly impact our financial results. These foreign currency transaction and translation gains and losses are presented as a separate line item on our condensed consolidated statements of operations. Continued fluctuation of these exchange rates could result in financial results that are not comparable from quarter to quarter. We do not currently utilize foreign currency contracts to mitigate the gains and losses generated by the re-measurement of non-functional currency assets and liabilities but do hold cash reserves in currencies in which those reserves are anticipated to be expended.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of the Chief Executive Officer and Chief Financial Officer, carried out an evaluation required by the Securities Exchange Act of 1934, as amended (the "Exchange Act"), of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rule 13a-15(e) of the Exchange Act, as of September 30, 2013. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of September 30, 2013, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms and to provide reasonable assurance 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 disclosures.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the fiscal quarter ended September 30, 2013, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Controls and Procedures

Our management, including the Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. Thus, misstatements due to error or fraud may occur and not be detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of controls.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The Company is not a party to any material legal proceedings at the date of filing of this Quarterly Report on Form 10-Q.

ITEM 1A. RISK FACTORS

In addition to the information set forth in this report you should carefully consider the risk factors described in Part I, Item 1A. "Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2012 filed with the SEC on February 27, 2013.

ITEM 6. EXHIBITS

- 3.1 Certificate of Incorporation of HeartWare International, Inc. (1)
- 3.2 Bylaws of HeartWare International, Inc. (1)
- 10.1 Sublease agreement, dated as of October 17, 2013, by and between The TJX Companies, Inc. and HeartWare International, Inc. *
- 31.1 Certification by the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 *
- 31.2 Certification by the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 *
- 32.1 Certification by the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 *
- 32.2 Certification by the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 *
- 101 The following materials from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2013, formatted in XBRL (Extensible Business Reporting Language): (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations, (iii) Condensed Consolidated Statements of Comprehensive Loss, (iv) Condensed Consolidated Statement of Stockholders' Equity, (v) Condensed Consolidated Statements of Cash Flows, and (vi) Notes to the Condensed Consolidated Financial Statements. ***

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- (1) Incorporated by reference to the respective exhibits filed with the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on November 13, 2008.

* Filed herewith

*** This exhibit shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any filing, except to the extent the Company specifically incorporates it by reference.

SIGNATURES

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

Date: November 7, 2013

HEARTWARE INTERNATIONAL, INC.

/s/ Douglas Godshall

Douglas Godshall
President and Chief Executive Officer
(Principal Executive Officer)

Date: November 7, 2013

/s/ Peter F. McAree

Peter F. McAree
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

EXHIBIT INDEX

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SUBLEASE

SUBLEASE (this “Sublease”), dated as of October 17, 2013, by and between **THE TJX COMPANIES, INC.**, a Delaware corporation, as Sublessor (“Sublessor”), and **HEARTWARE INTERNATIONAL, INC.**, a Delaware corporation, as Subtenant (“Subtenant”).

1. Parent Lease

A. Reference is made to a Lease dated as of April 1, 2005, as amended by a Term Commencement Agreement dated August 12, 2005, a First Amendment to Lease Agreement dated as of April 5, 2007, a Letter Agreement dated October 14, 2005, a Second Amendment to Lease dated as of October 16, 2009 and Letter Agreement dated July 18, 2012, between OCP LLC, a Massachusetts limited liability company, as landlord (hereinafter together with its successors and assigns referred to as “Parent Landlord”), and Sublessor, as tenant (the Lease as amended from time to time is hereinafter referred to as the “Parent Lease”), and the leasing thereunder of certain premises (“Building A”) in which the Demised Premises (as defined below) is located within an office park located at 500 Old Connecticut Path in Framingham, Massachusetts. For purposes of clarification, Sublessor leases a significant portion of, but not all of, the office park.

B. This Sublease is, and shall be, subject and subordinate to the Parent Lease. Failure by Subtenant to comply with any of the terms, conditions or obligations contained in the Parent Lease exclusive of those provisions identified in Section 1(C) below, after notice and expiration of any applicable grace period under this Sublease provided for curing thereof, shall be considered a default of this Sublease. With respect to all obligations, services, conditions and agreements to be furnished, observed or performed by Parent Landlord under the Parent Lease, to or for the Demised Premises (as that term is defined in Section 2 below), except as set forth in this Sublease, Subtenant shall look only to the Parent Landlord for the performance, observance or furnishing thereof, and no failure on the part of Parent Landlord to furnish such services or perform such agreements or obligations or observe such conditions shall constitute a breach of the obligations of Sublessor. Sublessor shall, upon receipt of notice from Subtenant, promptly make demand upon Parent Landlord, and use commercially reasonable efforts to obtain Parent Landlord’s performance of any obligation or observance of any condition imposed upon Parent Landlord under the Parent Lease and the furnishing of any service by Parent Landlord required of Parent Landlord under the Parent Lease. If the term of the Parent Lease shall terminate or expire, whether by its terms or due to the act, omission or election of any party thereto (including, without limitation the exercise of any termination right by Sublessor), then the term of this Sublease shall terminate or expire simultaneously therewith. Sublessor shall not amend the Parent Lease in any way that reduces Subtenant’s rights or increases Subtenant’s liabilities, and Sublessor shall not voluntarily terminate the Parent Lease as it relates to the Demised Premises or the parts of the office park used by Subtenant.

C. Except as otherwise provided in this Sublease and except for obligations specifically addressed in this Sublease which are different than those specified in the Parent Lease, during the term of this Sublease, Subtenant shall perform and observe all of the obligations, terms and conditions set forth in the provisions of the Parent Lease which are to be performed or observed by Sublessor as tenant thereunder with respect to the Demised Premises and Subtenant shall have the benefit of the obligations, terms and conditions set forth in the provisions of the Parent Lease referred to in this Sublease which are to be performed by Parent Landlord as landlord thereunder with respect to the Demised Premises, and Sublessor shall, upon reasonable request of Subtenant, cooperate with Subtenant in enforcing such provisions, at Subtenant's expense, and without any liability on the part of Sublessor as a result of any default of Parent Landlord under the Parent Lease. All of the provisions of the Parent Lease which are referred to in this Sublease are hereby incorporated herein by reference and made a part hereof, except for Sections 3.02, Article 4, the second paragraph of Section 6.04, 7.01, 7.02, 7.03, 7.05 (with respect to Building B and Multi-Tenant Building Maintenance Costs), 26.04, and 26.08 of the Parent Lease and the provisions of the Parent Lease directly contradicted by this Sublease in which event the terms and conditions of this Sublease shall control over the terms and conditions of the Parent Lease. Any expression that is used both in this Sublease and in any of the provisions of the Parent Lease and is not defined in this Sublease shall have the same definition herein as defined in the Parent Lease.

2. Premises

In consideration of the rents, agreements and conditions herein contained on the part of Subtenant to be paid, performed and observed, Sublessor does hereby demise and sublease to Subtenant, and Subtenant hereby rents from Sublessor, for the term hereinafter set forth, upon and subject to the agreements and conditions of this Sublease, that certain space depicted on Schedule A attached hereto, containing approximately fifty eight thousand forty four (58,044) gross square feet of floor area located on the second and third floors of Building A (the "Demised Premises"). The Demised Premises are hereby demised to Subtenant subject to, and with the benefit of, the Parent Lease and all easements, restrictions, and encumbrances therein set forth, including without limitation, the non-exclusive right to use, in common with others, the parking areas, accesses, driveways and walkways and any other so-called common areas which Sublessor has the right to use pursuant to the Parent Lease (the "Common Areas"). Measurement of the Demised Premises shall be consistent with the definition of "Rentable Area of the Premises" in the Parent Lease.

Building A has two (2) shared tailboard height loading dock areas. Subtenant shall have non-exclusive access to the common loading dock area. Subtenant shall also have coordinated right of use to the freight elevator located in Building B.

Subtenant shall use no more than three and one half (3.5) parking spaces for each one thousand (1,000) gross square feet of floor area of the Demised Premises.

Throughout the term of this Sublease, Sublessor shall maintain in good working order (or cause to be maintained in good working order) the cafeteria, fitness center, the elevators, the loading dock areas and the Common Areas.

3. **Term**

A. Original Term. The original term of this Sublease shall be the period of seven (7) years and a fraction of a year commencing on the "Commencement Date" (as defined below), and terminating on the last day of the month during which the seventh (7th) anniversary of the Commencement Date shall occur, except however, that if the Commencement Date shall be a first day of a calendar month then the original term of this Sublease shall be the period of seven (7) years commencing on the Commencement Date and terminating at midnight on the day prior to the seventh (7th) anniversary thereof. Upon the request of either party, the parties shall execute an agreement setting forth the Commencement Date and expiration date of this Sublease.

The Commencement Date shall be sixty (60) days after the date the Demised Premises are delivered to Subtenant with Sublessor's Work (as defined below) substantially completed, but in no event shall the Commencement Date occur unless and until the Parent Landlord provides its consent to this Sublease in form and substance reasonably satisfactory to Subtenant. Sublessor shall use commercially reasonable and diligent efforts to deliver the Demised Premises to Subtenant with Sublessor's Work substantially completed on or before January 1, 2014. For purposes of this Paragraph 3, "substantially completed" means that Sublessor's Work is completed except for minor punch list items such as touch-ups or adjustments that may be required for full completion but do not affect Subtenant's ability to use the Demised Premises for its intended purposes. Sublessor shall complete all Punch-List Items within thirty (30) days after the Commencement Date in a manner that does not interfere with Subtenant's use of the Demised Premises.

B. Rights to Extend. Provided that Subtenant is not in default of this Sublease after any applicable notice and cure periods at the time Subtenant exercises its rights pursuant to this Section 3(B), Subtenant shall have the right, at its election, to extend the original term of this Sublease for one (1) extension period of fifty seven (57) months, but in no event beyond September 30, 2025 (sometimes herein referred to as the "Extension Period"), provided that Subtenant shall give notice of the exercise of its election at least twelve (12) months prior to the expiration of the original term. The expression "the original term" means the period described in Section A of this Paragraph 3 as the original term. Prior to the exercise by Subtenant of the elective to extend the original term, the expression "the term of this Sublease" shall mean the original term; after the exercise by Subtenant of the aforesaid election, the expression "the term of this Sublease" shall mean the original term as it may have been then extended. Except as expressly otherwise provided in this Sublease, all the agreements and conditions in this Sublease contained shall apply to the extension period for which the original term shall be extended, as aforesaid, including, without limitation, payment of Rent, except that there shall be no further elections to extend the term except as expressly set forth in this Sublease. When and if Subtenant shall give notice of the exercise of said

election in the manner and within the time provided, aforesaid, the term shall be extended upon the giving of the notice without the requirement of any action on the part of Sublessor. Notwithstanding any of the provisions of this Sublease to the contrary, Subtenant shall have no right to extend the term of this Sublease beyond September 30, 2025, unless Sublessor, in its sole discretion, shall first exercise its right to extend the term of the Parent Lease and, if Sublessor shall fail to exercise any of its options to extend the term of the Parent Lease, all of Subtenant's rights to extend the term of this Sublease shall thereupon terminate.

4. Construction of Improvements: Furniture

A. Sublessor's Work: Sublessor shall, at its sole cost and expense, within sixty (60) days after full execution and delivery of this Sublease: (i) erect the necessary demising walls so as to separate the Demised Premises from the remainder of Building A; (ii) erect a wall separating the Demised Premises from the rest of Building A at the main entrance to Building A; (iii) provide a means of egress from the Building A loading dock (but Sublessor shall not be required to construct any such access while Subtenant is the only occupant of Building A) (this may also result in a change to the square footage); (iv) provide card access in the elevator to the Demised Premises; (v) intentionally omitted; (vi) install new carpet squares sufficient to carpet the main hallways on two (2) floors of Building A that Subtenant will occupy; and (vii) re-carpet the first (1st) floor common hallway in Building A (herein, collectively, "Sublessor's Work"). After the demising walls are constructed, either party shall have the right to cause a measurement to be made of the square feet of floor area within the Demised Premises, and if such measurement reveals that the Demised Premises contains more or less square footage than as indicated in Paragraph 2, at the request of either party, the parties agree to execute and amend to this Sublease setting forth the exact square footage of the Demised Premises, and also setting forth any adjustments in the minimum rent payable pursuant to Paragraph 5, Subtenant's pro rata share of Operating Expenses and Taxes and any other provisions of this Sublease based on the square footage of the Demised Premises. Subtenant's Work shall be completed in good workmanlike manner using materials that are comparable to the materials in other portions of Building A leased by Sublessor.

B. As-Is Condition. Except for Sublessor's Work, Subtenant acknowledges that it has inspected the Demised Premises, is fully acquainted with its condition and agrees to and hereby accepts the Demised Premises in their "as is" condition on the Commencement Date with no representation or warranty directly or indirectly by Sublessor as to the condition of the Demised Premises or their suitability for Subtenant's proposed improvements thereto or use thereof or the condition of Building A, and with no promise by Sublessor or its agents to improve or repair the Demised Premises or Building A. To the best of Sublessor's knowledge, without inquiry, the Demised Premises is free from hazardous materials in excess of legal limits.

C. Furniture. Sublessor shall provide to Subtenant free of charge wall systems for ten (10) offices and furniture set-ups for five (5) offices, consistent with the current configurations that exist within the Demised Premises. Subtenant shall have the right, free of charge and throughout the term of this Sublease, to use all existing furniture, demountable

walls, raised floor, under-floor distributed electric, voice-data lines and appliances (existing refrigerators and microwaves in the Demised Premises) as existing in the Demised Premises on July 3, 2013 (collectively, the "Sublessor's Property"), which Sublessor grants on an AS IS WHERE IS BASIS without representation or warranty of any kind. On-going maintenance, repair and reconfiguration of such furniture and appliances shall be at the sole cost and expense of Subtenant. Subtenant shall maintain the Sublessor's Property in good order and condition, reasonable wear and tear excepted, and, with the exception of the furniture and personal property (including without limitation demountable walls, whether or not affixed to the Demised Premises), which Subtenant may keep at Subtenant's option, shall be returned to Sublessor at the expiration or termination of the term of this Sublease in good order and condition, reasonable wear and tear excepted. At the expiration or termination of this Sublease, Subtenant shall return to Sublessor all of Sublessor's Property remaining in the Demised Premises, except for the furniture as stated above.

D. Fit-Out Allowance. Sublessor shall provide Subtenant with an allowance of Five Thousand Eight Hundred Four Dollars and Forty Cents (\$5,804.40) to be used for a fit-plan to be performed by Subtenant's architect. Sublessor shall reimburse such amount to Subtenant within thirty (30) days of Sublessor's receipt of an invoice therefor and evidence of such payment to Subtenant's architect by Subtenant.

E. Except for Sublessor's Work, all improvements to the Demised Premises desired by Subtenant for Subtenant's use or occupancy thereof shall be completed by Subtenant, at Subtenant's expense, and shall hereinafter be referred to as "Subtenant Improvements". The Subtenant Improvements shall be completed by Subtenant in conformity with plans and specifications covering the Subtenant Improvements in such detail as Sublessor may require, and Subtenant agrees not to commence work on any of the Subtenant Improvements until Sublessor has approved such plans and specifications in writing. Notwithstanding the foregoing, no such plans shall be required for any portions of the Subtenant's Improvements that do not require and building permit. At all times during Subtenant's construction, Sublessor and its representatives shall have the right to enter upon the Demised Premises for the purpose of inspecting construction and progress of the Subtenant Improvements and performing work therein, provided such work does not in any way interfere with Sublessor's Work in the Demised Premises. In addition, all Subtenant Improvements are subject to the approval of or notice to the Parent Landlord to the extent so required under the Parent Lease. Sublessor hereby approves those certain plans and specifications titled "Heartware; Tenant Fit-Out; 500 Old Connecticut Path; Design Development; September 24, 2013" prepared by Gorman Richardson Lewis Architects, which plans and specifications were delivered to Sublessor on September 30, 2013.

F. If Subtenant shall enter the Demised Premises or any part thereof prior to the Commencement Date (which Subtenant may not do without Sublessor's prior written consent), such entry shall be at Subtenant's sole risk and without interference to the work then being performed in Building A by Sublessor or other tenants or occupants, and all of the covenants and conditions of the Sublease shall be binding upon the parties hereto with respect to such whole or part of the Demised Premises, except for the obligation to pay Rent (except for utilities consumed in the Demised Premises).

5. Minimum Rent

Subtenant shall pay minimum rent as set forth on Schedule G attached hereto. All minimum rent shall be payable, without notice or demand, in equal monthly installments of one-twelfth the annual rate thereof then applicable, in advance, upon the first day of each calendar month included within the term of this Sublease without abatement (except as otherwise set forth in this Sublease), counterclaim, setoff or deduction whatsoever. Rent for the fraction of a month or year at the commencement of the term, and the fraction of a month or year at the termination of the term, if any, of this Sublease shall be pro-rated. All payments of minimum rent and all other payments payable pursuant to this Sublease, including without limitation Operating Expenses, Taxes, utilities and items designated as additional rent in this Sublease (collectively, "Rent") to be made by Subtenant to Sublessor shall be made payable to Sublessor and sent to Sublessor at the place to which notices to Sublessor are required to be sent unless Sublessor shall direct otherwise by notice to Subtenant. All Rent and other sums payable by Subtenant hereunder shall, unless expressly otherwise provided herein, be payable on or before the date Sublessor makes payment thereof under the Parent Lease, or to any utility company, or person entitled to payment thereof, as the case may be. Notwithstanding the foregoing, or any other provision of this Sublease, except for payments of minimum rent, Operating Expenses and Taxes (which shall be paid as required pursuant to this Sublease), Subtenant shall not be obligated to pay any amounts payable under this Sublease until the thirtieth (30th) day after Subtenant receives an invoice therefor from Sublessor.

6. Real Estate Taxes and Common Area Maintenance Charges

In addition to paying the minimum rent specified in Paragraph 5 hereof, Subtenant shall pay as additional rent, the amounts determined pursuant to Subparagraph B of this Section 6. All amounts due under this Section 6 as additional rent shall be payable for the same periods and in the same manner, time and place as the minimum rent, without any abatement (except as otherwise set forth in this Sublease), counterclaim, set-off or deduction whatsoever. Without limitation on other obligations of Subtenant which shall survive the expiration of the term of this Sublease, the obligations of Subtenant to pay the additional rent provided for in this Section 6 shall survive the expiration of the term of this Sublease. For any partial Expense Year (as such term is defined below), Subtenant shall be obligated to pay only a pro-rata share of the additional rent, based on the number of days of the term of this Sublease falling within such Expense Year.

A. Definitions. As used in this Paragraph 6, the terms:

(i) "Expense Year" shall mean each twelve (12) month period in which any part of the term of this Sublease falls, commencing with the Commencement Date through and including the year which the term of this Sublease expires.

(ii) "Taxes" shall have the same definition as the term "Taxes" in the Parent Lease and are due and payable by Sublessor to the Parent Landlord.

(iii) "Operating Expenses" shall have the same definition as the term "Operating Expenses" in the Parent Lease and are due and payable by Sublessor to the Parent Landlord for Building A, except that, notwithstanding anything to the contrary contained in this Sublease, for purposes of this Sublease, the Management Fee (as defined in the Parent Lease) shall be part of Operating Expenses.

B. Expense Adjustment. Subtenant shall pay to Sublessor in the manner hereinafter provided the amount, if any, by which Taxes allocable to the Demised Premises (determined as below provided) for each tax year after the "Tax Base Year" (hereinafter defined) included within the term of this Sublease exceed the Taxes allocable to the Demised Premises for the Tax Base Year; for the last tax year included in part within the term of this Sublease, Subtenant shall pay to Sublessor a pro rata share of such excess for such tax year, based upon the portion of such tax year included within the term of this Sublease. The "Tax Base Year" is Fiscal Year 2014.

Subtenant shall pay to Sublessor in the manner hereinafter provided the amount, if any, by which Operating Expenses allocable to the Demised Premises (determined as below provided) for each calendar year after the "Operating Base Year" (hereinafter defined) included within the term of this Sublease exceed the Operating Expenses allocable to the Demised Premises for the Operating Base Year; for the last calendar year included in part within the term of this Sublease, Subtenant shall pay to Sublessor a pro rata share of such excess for such calendar year, based upon the portion of such year included within the term of this Sublease. The "Operating Base Year" is calendar year 2013.

Subtenant shall pay to Sublessor, as additional rent a sum equal to (i) the product of (a) Subtenant's Operating Expenses Proportionate Share (as defined below) and (b) the Operating Expenses incurred with respect to each Expense Year that exceed the Operating Base Year plus (ii) the product of (c) Subtenant's Tax Proportionate Share (as defined below) and (d) the real estate taxes incurred with respect to each Expense Year that exceed the Tax Base Year (collectively, the "Expense Adjustment Amount"). Subtenant's Operating Expenses Proportionate Share is a fraction the numerator of which shall be the floor area of the Demised Premises and the denominator of which shall be the floor area of the premises leased by Sublessor under the Parent Lease in Building A. Subtenant's Tax Proportionate Share is a fraction, the numerator of which shall be the floor area of the Demised Premises and the denominator of which shall be the floor area leased by the Sublessor under the Parent Lease. The amounts payable by Subtenant under this Section 6 shall be payable monthly, on account, at the times minimum rent is payable hereunder, in equal monthly installments of one-twelfth (1/12th) of the annual estimated amount of the Expense Adjustment Amount actually payable by Sublessor under the Parent Lease (except as otherwise set forth in this Sublease). Following the close of each Expense Year and after receipt by Sublessor of evidence of the Operating

Expenses and Taxes from Parent Landlord, Sublessor shall cause the amount of the Expense Adjustment Amount for such Expense Year to be computed based on Operating Expenses for such Expense Year and Sublessor shall deliver to Subtenant a statement of such amount and Subtenant shall pay any deficiency to Sublessor as shown by such statement within thirty (30) days after receipt of such statement. If the total of the estimated monthly installments paid by Subtenant during any Expense Year exceeds the actual Expense Adjustment Amount due from Subtenant for such Expense Year, at Sublessor's option, such excess shall be either credited against payments next due hereunder or refunded by Sublessor, provided Subtenant is not then in default hereunder, in which event such credit or refund shall not take place until such default has been cured. Delay in computation of the Expense Adjustment Amount or failure to deliver a statement of such amount shall not be deemed a default hereunder or a waiver of Sublessor's right to collect the Expense Adjustment Amount. Notwithstanding anything to the contrary contained in this Sublease, in no event shall Subtenant be responsible to pay or reimburse Sublessor for any late charges, penalties, or other amounts due by Sublessor under the Parent Lease as a result of a breach of the Parent Lease by Sublessor or for any losses, liability or similar items (including without limitation indemnities under the Parent Lease) caused by any act or omission by Sublessor or any party other than Subtenant.

The provisions of the fourth (4th) paragraph of the definition of Operating Expenses in the Parent Lease shall be applicable to this Sublease. For purposes of clarification, Subtenant shall pay Subtenant's Operating Expenses Proportionate Share of premiums for casualty and liability insurance carried by Parent Landlord, but not for casualty, liability or other insurance carried (or required to be carried pursuant to the Parent Lease) by Sublessor.

C. Sublessor represents to Subtenant the following:

2011 Operating Expenses for Building A were billed by Parent Landlord (Sublessor disputes various components of this amount):	\$ 198,453.10	
		(\$ 2.28 p.s.f.)
This amount includes the charge for water and sewer, which is broken out below.		
2011 Electric Bill for Building A:	\$ 277,378.46	
		(\$ 3.19 p.s.f.)
2011 Real Estate Taxes:		\$ 3.08 p.s.f.
2011 Sublessor's share of Parent Landlord's Insurance for Building A:		
Property:	\$6,770.00	
Liability:	\$1,148.00	\$ 7,918.00
2011 Water and Sewer Charges for Building A:		
Water:	\$6,362.40	
Sewer:	9,331.90	\$ 15,694.30

7. Utilities

A. Subtenant shall pay its cost of utilities used or consumed in the Demised Premises pursuant to the terms of this Sublease, including without limitation, electricity, gas and telephone. Subtenant shall pay the cost of its telephone service directly to the applicable telephone service provider. Water and sewer will be billed to Subtenant as part of the Operating Expenses pursuant to the third (3rd) paragraph of Section 6B above. In addition, Subtenant shall reimburse Sublessor within thirty (30) days after receipt of an invoice therefor, the cost of gas and electricity for which Subtenant shall pay its proportionate share based on a fraction, the numerator of which is the gross leasable area of the Demised Premises and the denominator of which is the gross leasable area of space leased by Sublessor in the office park of which Building A is a part. In the event such charges shall not be paid when due, Sublessor shall have the right to pay same, which amount so paid is hereby declared to be additional rent due on demand with interest at the Delinquency Rate (as defined in Section 22.06 of the Parent Lease). If a tenant in the office park of which Building A is a part uses a materially disproportionate amount of any utility, at Subtenant's request, Sublessor shall make a reasonable and equitable allocation of the charges for such utility based on a reasonable estimate of each tenant's consumption of such utility.

B. Sublessor and Subtenant hereby acknowledge that all or a part of the utilities referred to this Sublease may be located in or upon the Demised Premises. Sublessor and Subtenant hereby agree that Sublessor shall have the right, license and easement within the Demised Premises to install, replace, maintain, repair, inspect and use the aforesaid utilities systems at no additional cost to Sublessor. Sublessor shall not be liable for any failure or interruption of any utility service except to the extent caused by the negligence or willful misconduct of Sublessor. No failure or interruption of any utility service shall entitle Subtenant to terminate this Sublease, or discontinue making payments of any Rent nor shall the same give rise to a claim that such constitutes actual or constructive, total or partial eviction from the Demised Premises, unless such failure is not restored within thirty (30) days (or, if such failure is of a nature that it cannot be so restored within such thirty (30) days and was not caused by the act or omission of Sublessor, sixty (60) days after notice to Sublessor of such failure). Subtenant shall be entitled to a proportionate abatement of minimum rent during the period that such failure or interruption continues, such abatement to be based on the impact of Subtenant's ability to conduct business in the Demised Premises, but exclusive of consequential damages, all consistent with Sublessor's remedies under Section 8.04 of the Parent Lease. Sublessor agrees to use commercially reasonable efforts to enforce its rights under Section 8.04 of the Parent Lease.

8. Early Access

Subtenant shall have the right, without payment of Rent, during the sixty (60) days before the Commencement Date, after coordinating such entry with Sublessor, to enter

the Demised Premises to inspect the same, to make measurements, and to make the Subtenant Improvements. Subtenant agrees that any such entry shall be done without unreasonably hampering the performance of Sublessor's Work. No such entry by Tenant shall be deemed an acceptance of the Demised Premises. Prior to the Commencement Date while Subtenant has access to the Demised Premises as hereinabove provided, Subtenant shall be in the Demised Premises at its own risk and shall not interfere with the work then being performed in Building A by Sublessor or other tenants or occupants, and all of the insurance and indemnity obligations set forth in this Sublease shall be binding upon the parties hereto.

9. Additional Services from Parent Landlord

If Subtenant requests additional services or materials to be provided with respect to the Demised Premises, Sublessor shall request same from Parent Landlord and if Parent Landlord provides same then Subtenant shall be liable for the costs of such services or materials and Subtenant shall reimburse Sublessor within 30 days after receipt of an invoice therefore.

10. Late Charge

The term "Rent" as used in this Sublease shall have the meaning set forth in Section 5 above. In the event the Subtenant fails to make any payment of Rent within five (5) days after the same is due more than once in any consecutive twelve (12) month period, then in addition to all rights, powers and remedies provided herein, by law or otherwise in the case of nonpayment of Rent, Subtenant shall be obligated to pay a late payment charge equal to the greater of One Hundred Dollars (\$100.00) or five percent (5%) of any Rent payment not paid when due to reimburse Sublessor for its additional administrative costs. Such late charge shall constitute additional rent hereunder and shall be payable immediately upon demand. In addition, any Rent which is not paid after the same is due shall bear interest at the "Delinquency Rate" (as defined in Section 22.06 of the Parent Lease) from the first (1st) day due until paid. Any such interest shall be payable as additional rent hereunder, and shall be payable immediately on demand. If Subtenant fails in two (2) consecutive months to make rental payments within seven (7) days after the date due, Sublessor in order to reduce its administrative costs, may require, by giving written notice to Subtenant (and in addition to any interest accruing pursuant to the immediately preceding sentence above, as well as any other term, provision or covenant of this Sublease), that minimum rent is to be paid quarterly in advance instead of monthly and that all future rental payments are to be made on or before the due date by cash, cashier's check or money order or wire transfer, and that the delivery of Subtenant's personal or corporate check will no longer constitute a payment of rental as provided in this Sublease. Any acceptance of a monthly rental payment or of a personal or corporate check thereafter by Sublessor shall not be construed as a subsequent waiver of said rights. Subtenant may pay any amount required to be paid pursuant to this Sublease "under protest" or otherwise with a reservation of its rights set forth in this Sublease.

11. Other Taxes

In addition to Subtenant's Tax Proportionate Share, Subtenant shall pay all taxes levied, imposed or assessed against furniture, trade fixtures, leasehold improvements (installed by or on behalf of Subtenant or anyone claiming under Subtenant), equipment, signs and any other of Subtenant's personal or other property located in or upon the Demised Premises. If at any time during the term of this Sublease, a tax or excise on rents, or other tax however described (except any franchise, estate, inheritance, capital stock, income or excess profits tax imposed upon Sublessor) is payable by Sublessor to any lawful taxing authority on account of Sublessor's interest in this Sublease or the Rent reserved hereunder as a substitute in whole or in part, of the Taxes described in Article 6, Subtenant agrees to pay the amount of such tax or excise to Sublessor at the same time that Subtenant makes any payment of rent or other charges to Sublessor required hereunder. In the event any such tax or excise is levied or assessed directly against Subtenant, then Subtenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require, and Subtenant hereby agrees to indemnify and hold Sublessor harmless from and against any and all liabilities or obligations of any nature whatsoever arising from or incurred in connection therewith. Subtenant shall have the right to contest taxes on Subtenant's personal property. If Parent Landlord has contested the real estate taxes and (i) if such application is successful; and (ii) Subtenant has made a payment with respect to real estate taxes in accordance with the terms of this Sublease for the period with respect to which the abatement was granted; and (iii) Subtenant is not in default of this Sublease beyond any applicable notice and cure period; and (iv) if Parent Landlord (after deducting from the amount of the abatement its reasonable expenses incurred by it in connection with the contest) has recomputed Sublessor's obligation with respect to real estate taxes and refunded Sublessor's overpayment to Sublessor, the Sublessor shall recompute Subtenant's obligation with respect to real estate taxes and refund Subtenant's overpayment to Subtenant.

12. Alterations

Without Sublessor's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed, Subtenant shall not make (a) any repairs, alterations, replacements, other improvements or installations to the exterior of the Demised Premises or Building A or the foundation, roof, exterior walls, gutters, downspouts, canopy, storefront or any structural parts of the Demised Premises, (b) any interior, non-structural repairs, alterations, installations or improvements to the Demised Premises the estimated cost of which exceeds Fifty Thousand Dollars (\$50,000.00), or (c) any repairs, alterations, installations or improvements that would affect any centralized or common utilities or any other tenant's or occupant's HVAC system or systems or any Building system serving another tenant. If Sublessor's approval is required for any alterations or improvements, Subtenant shall submit to Sublessor all plans and specifications for any such repairs, alterations, installations or improvements unless such alterations or improvements do not require a building permit, in which case Subtenant shall provide a reasonable description of its intended alterations and improvements. Any repairs, alterations, installations or improvements by Subtenant permitted

hereunder shall conform to the requirements of, and be subject to the Parent Lease, including, without limitation, obtaining any consents required thereunder. If Sublessor does not approve a proposed alteration, Sublessor shall provide its reasons for disapproval.

Subtenant agrees that any repairs, alterations, replacements, other improvements or installations made by Subtenant to or upon the Demised Premises shall be done in a good and workmanlike manner and in conformity with all laws, ordinances and regulations of all public authorities having jurisdiction, that materials of good quality shall be employed therein, that the structure of the Demised Premises shall not be endangered or impaired thereby.

Subtenant shall procure at its sole expense all necessary permits before making any repairs, alterations, improvements or installations. Upon request of Subtenant, Sublessor shall request the cooperation therewith of Parent Landlord. Subtenant shall save Sublessor and Parent Landlord harmless from, and defend and indemnify Sublessor and Parent Landlord against, any and all injury, loss claim or damage to any person or property occasioned by or arising out of the doing of any such work, except to the extent such injury, loss, claim or damage is caused by the negligence or willful misconduct of Sublessor.

Subtenant shall permit no mechanic's, materialmen's or other lien against the Demised Premises in connection with any materials, labor or equipment furnished, or claimed to have been furnished, to or for Subtenant, or anyone claiming under Subtenant, and if any such lien shall be filed against the Demised Premises Subtenant shall cause the same to be discharged, provided, however, that Subtenant may contest such lien as long as the enforcement thereof is stayed, but in any event, Subtenant shall either cause any such lien to be discharged of record within ten (10) days of any request of any mortgagee, or of Parent Landlord or Sublessor or in lieu thereof, if permitted pursuant to the Parent Lease, while contesting the same as aforesaid, deposit with any mortgagee or prospective mortgagee of the Demised Premises, pending such contest, a sum sufficient to cover the amount of said lien and all interest, penalties and costs that would be payable to discharge such lien if such lien were valid.

13. Signs

Prior to the Commencement Date, Sublessor shall provide and install interior building standard signage on Building A directory and at the entrance to the Demised Premises, at Sublessor's sole cost and expense. Subtenant shall also have the right to install exterior signage on Building A, subject to Subtenant's compliance with applicable governmental laws, codes and regulations and the provisions of the Parent Lease, including, without limitation, obtaining any required consent from the Parent Landlord. Sublessor agrees to use commercially reasonable efforts to cooperate with Subtenant's efforts to obtain Parent Landlord's consent for any such exterior signage. Subtenant shall obtain all permits and approvals necessary for such exterior signage and shall maintain such signage in good condition and repair and in proper operating order at all times. Subtenant shall be responsible for such

sign as if the same were inside the Demised Premises. Except as specifically permitted herein, no other signs shall be permitted without the approval of Sublessor. Subtenant shall remove all signs (other than signs required to be installed by Sublessor pursuant to this Section 13) at the expiration or earlier termination of the term of this Sublease and shall repair any and all damage caused by the installation, maintenance, repair and removal of such signs.

14. Repairs

A. Subtenant shall promptly make all repairs and alterations to the Demised Premises which may be required as a result of repairs, alterations, other improvements or installations made by Subtenant, anyone claiming under Subtenant or the agents of any of them.

B. If Subtenant shall give Sublessor notice of the need for any repair or alteration to the Demised Premises which is required to be made by Parent Landlord, pursuant to the Parent Lease, Sublessor shall promptly give Parent Landlord notice of the need for such repair or alteration and shall cooperate with Subtenant to enforce said repair or alteration obligation of Parent Landlord.

C. Notwithstanding Sublessor's obligations under the Parent Lease, except for Sublessor's obligations set forth in this Sublease, Subtenant will, throughout the term of this Sublease, be responsible to keep and maintain only the interior of the Demised Premises and all fixtures and equipment located therein (exclusive of any Building systems or structural components) clean, safe and in the same (or better) working order and condition as existed on the Commencement Date, reasonable wear and tear excepted, and make all necessary repairs thereto. All repairs required of Subtenant in connection herewith shall be done in a good and workmanlike manner in compliance with all applicable laws and the terms and conditions of this Sublease. All maintenance, repairs, and replacements that are not Subtenant's responsibility pursuant to this Section 14(C) shall be Sublessor's responsibility except to the extent that such maintenance, repairs, and replacement obligations are Parent Landlord's responsibility under the Parent Lease.

15. Assignment and Subletting

Subtenant shall not assign, mortgage, pledge or otherwise encumber or transfer its interest in this Sublease or in the Demised Premises, or sublet the whole or any part of the Demised Premises without on each occasion obtaining the prior consent of the Sublessor, which consent Sublessor shall not unreasonably withhold, condition or delay and the consent of the Parent Landlord pursuant to the terms of the Parent Lease. Subtenant shall first give Sublessor notice of the intended transfer or subletting and the intended date thereof and the name of the business organization involved, the effective date of the intended assignment or subletting and any information required pursuant to the terms of the Parent Lease. Except with respect to a transfer of the type described in the last sentence of this Section 15, within forty (40) days after the giving of such notice by Subtenant to Sublessor of such intended assignment

or subletting, Sublessor may give notice to Subtenant that Sublessor elects to terminate the term of this Sublease as of said intended date of said assignment or subletting of the entire Demised Premises, and, if Sublessor elects to terminate this Sublease, the term of this Sublease shall terminate on said intended date as if said intended date was the date originally fixed herein for the termination hereof, except in the case of a proposed subletting of a portion of the Demised Premises, in which event Sublessor may terminate the term of this Sublease with respect to the portion of the Demised Premises proposed to be sublet, but Subtenant shall be responsible for separately demising the remainder of the Demised Premises. No assignment or other transfer of Subtenant's interest in this Sublease otherwise permitted hereunder shall be effective unless and until the assignee or transferee thereunder shall deliver to Sublessor a copy of the assignment or transfer thereto and the written agreement of such assignee or transferee with Sublessor to perform and observe all of the terms and conditions on the part of Subtenant to be performed or observed under this Sublease with respect to the premises so assigned or sublet. Notwithstanding any such assignment, transfer or sublease, Subtenant shall remain fully, primarily and unconditionally liable under this Sublease, and without any so-called suretyship defenses with respect thereto and shall not thereby be released from the performance and observance of all of the agreements and conditions on the part of Subtenant to be performed or observed hereunder. Notwithstanding the foregoing, no consent shall be required for any assignment or subletting of the type described in subsections (b) and (c) of the sixth (6th) paragraph of Section 13.01 of the Parent Lease.

16. Use

The Demised Premises shall be used and occupied only for the purpose of office use and laboratory use ancillary thereto (including without limitation electromechanical development and testing) and for no other purpose or purposes whatsoever. Notwithstanding anything to the contrary contained herein and without intending to expand in any way upon the use permitted in the preceding sentence, the Demised Premises shall not be used for any purpose, use or business restricted by or prohibited under the Parent Lease. Subtenant agrees that nothing shall be done in, upon or about the Demised Premises which shall be contrary to any law, ordinance, regulation or requirement of any public authority or insurance inspection or rating bureau having jurisdiction. Subtenant shall procure, at its sole expense, any licenses and permits which may be required for the transaction of business in or use of the Demised Premises and shall otherwise comply with all applicable laws, ordinances and governmental regulations and any order or regulation of any insurance company providing coverage on any part of Building A. Subtenant shall keep the Demised Premises free from waste at all times and shall keep the Demised Premises neat, clean and free of refuse at all times. All trash and refuse shall be stored only within designated trash storage areas in closed containers. Trash shall be removed from the Demised Premises on a daily basis by Sublessor as part of its janitorial responsibilities. Subtenant shall not do, or suffer to be done, or keep, or suffer to be kept, or omit to do, anything in, upon or about the Demised Premises which may prevent the obtaining of or invalidate any insurance on the Demised Premises or Building A, including without limitation, fire, extended coverage and public liability insurance or which may increase the rate of, any such insurance.

Subtenant shall comply with the requirements of all federal, state and local environmental laws, regulations and orders (collectively, "Environmental Laws") and shall immediately upon Subtenant's knowledge thereof, give notice to Sublessor of any presence, release or threat of release of any oil, asbestos or hazardous material, substances or waste regulated under Environmental Laws (collectively, "Hazardous Substances") at, to or from the Demised Premises, and of any notices from any governmental authority with respect thereto. Subtenant shall not cause or permit any Hazardous Substances to be used, stored generated or disposed of on or in the Demised Premises by Subtenant or any person claiming under Subtenant, except for those Hazardous Substances which may lawfully be used, stored, generated or disposed of in the ordinary course of business for cleaning office space, and then only to the extent Subtenant does not, in so doing, violate any Environmental Laws in effect at the time of so doing. If Subtenant shall default under the immediately preceding sentence, Subtenant shall defend and indemnify and save harmless Parent Landlord and Sublessor from and against any and all claims, damages, costs and losses, including without limitation, reasonable attorneys' fees, arising during or after the term as a result thereof. This indemnification includes, without limitation, any and all costs reasonably incurred by Sublessor or Parent Landlord after notice to Subtenant for any cleanup, removal or restoration to the extent mandated by any public official acting lawfully under any Environmental Laws. If Subtenant shall receive a complaint from a public agency or official of a default by Subtenant under this Article, then Subtenant shall comply with such complaint, but Subtenant shall not be in default under this sentence if Subtenant is contesting such complaint in accordance with law and the enforcement thereof is then withheld pending such contest. Except in the event of an emergency when immediate action is required and obtaining Sublessor's prior approval is not feasible, Subtenant shall first obtain Sublessor's approval for any remedial action required of Subtenant hereunder, which approval shall not be unreasonably withheld, conditioned or delayed.

17. Indemnity and Insurance

A. Subtenant shall save Parent Landlord and Sublessor harmless from, and defend and indemnify Sublessor and Parent Landlord against, to the extent permitted by law, any and all injury, liability, loss or damage, of whatever nature caused by or resulting from, or claimed to have been caused by or to have resulted from, any act, omission or negligence of Subtenant, or any person claiming under Subtenant (including, without limitation, employees and contractors of Subtenant), no matter where occurring in or around Building A, the Demised Premises or the Common Areas. It is a condition of this save harmless and indemnification of Sublessor that Subtenant shall receive notice of any claim against Sublessor promptly after Sublessor first has knowledge thereof. Sublessor shall give Subtenant notice of any such claim against Parent Landlord promptly after Sublessor first has knowledge thereof. This indemnity and hold harmless agreement shall include indemnity against all reasonable and actual costs, expenses and liabilities incurred in connection with any such injury, loss or damage or any such claim, or any proceeding brought thereon or the defense thereof. If Subtenant or any person claiming under Subtenant or the whole or any part of the property of Subtenant or any person

claiming under Subtenant shall be injured, lost or damaged by theft, fire, water or steam or in any other way or manner, whether similar or dissimilar to the foregoing, no part of said injury, loss or damage is to be borne by Parent Landlord or Sublessor unless the same shall be caused by or result from the fault or negligence of Parent Landlord or Sublessor, as the case may be. In addition to the foregoing indemnity, Subtenant shall be responsible for complying with the terms of any other indemnity or hold harmless provision under the Parent Lease, for which Sublessor is liable or responsible as Tenant, arising out of any act, omission or negligence by Subtenant or breach of this Sublease by Subtenant.

B. Subtenant shall maintain general comprehensive public liability insurance, with respect to the Demised Premises and their appurtenances, issued by insurance companies authorized to do business in the state in which the Demised Premises are located, naming Parent Landlord and its designees and Sublessor and Subtenant as insureds as their interests may appear, in a combined single limit of not less than Five Million Dollars (\$5,000,000.00) with respect to bodily injury and property damage or in such higher amounts as shall be required by Parent Landlord or Sublessor. Such insurance shall include, but not be limited to, coverage for premises/completed operations and contractual liability. Such limits may be achieved by a combination of primary and umbrella liability policies. Subtenant shall maintain (a) Automobile Liability insurance, covering any auto, owned, non-owned and hired autos, with limits of not less than One Million Dollars (\$1,000,000.00); (b) workers compensation and employers liability insurance as required by law, with limits of not less than One Million Dollars (\$1,000,000.00); and (c) umbrella/excess liability coverage over all of the above policies, with limits of not less than Two Million Dollars (\$2,000,000.00), such that the total limits of primary and umbrella/excess are at least Five Million Dollars (\$5,000,000.00). Subtenant shall deliver to Parent Landlord and Sublessor the policies of such insurance, or certificates thereof, at least fifteen (15) days prior to the Commencement Date, and each renewal policy or certificate thereof, at least fifteen (15) days prior to the expiration of the policy it renews, and obtain a written obligation of each insurance company to notify Parent Landlord and Sublessor at least twenty (20) days prior to cancellation of such insurance. Subtenant shall comply with any additional insurance requirements contained in the Parent Lease as if Subtenant were the tenant under the Parent Lease and Sublessor were the landlord under the Parent Lease; provided that Subtenant shall not be required to purchase or carry any casualty, liability or other insurance on behalf of Sublessor under the Parent Lease or to reimburse Sublessor for any insurance carried (or required to be carried pursuant to the Parent Lease) by Sublessor.

C. Subtenant agrees at all times, at its expense, to keep its furnishings, fixtures and other property situated within the Demised Premises insured against fire, with extended coverage, to the extent of the full replacement cost thereof. Such insurance shall be carried with companies reasonably satisfactory to Sublessor and shall be in form satisfactory to Sublessor. Subtenant shall deliver to Sublessor the policies of such insurance, or certificates thereof, at least fifteen (15) days prior to the Commencement Date, and each renewal policy or certificate thereof at least fifteen (15) days prior to the expiration of the policy it renews and obtain a written obligation of each insurance company to notify Sublessor at least ten (10) days

prior to cancellation of such insurance. Subtenant agrees that all of the furnishings, fixtures, equipment and other personal property of Subtenant which, during the term of this Sublease or any occupancy of the Demised Premises by Subtenant may be on the Demised Premises, shall be at the sole risk and hazard of Subtenant, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by leakage or bursting of water pipes, steam pipes, or other pipes, by theft or from any other cause, no part of said loss or damage is to be charged to or to be borne by Sublessor. Subtenant also agrees to carry workmen's compensation insurance as required by law.

D. Subtenant hereby releases Sublessor and Parent Landlord to the extent of Subtenant's actual insurance coverage or any other insurance Subtenant is required to maintain whether or not such insurance is actually maintained, from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties or any other casualty insured against, even if such fire or other casualty shall be brought about by the fault or negligence of Sublessor or its agents or Parent Landlord or its agents, provided, however, this release shall be in force and effect only with respect to loss or damage occurring during such time as Subtenant's policies covering such loss or damage shall contain a clause to the effect that this release shall not affect said policies or the right of Subtenant to recover thereunder. Subtenant agrees that its fire and other casualty insurance policies shall include such a clause confirming the foregoing.

E. Sublessor hereby releases Subtenant, to the extent of Sublessor's insurance coverage, from any and all liability for any loss or damage caused by fire or any of the extended coverage casualties or any other casualty insured against, even if such fire or other casualty shall be brought about by the fault or negligence of Subtenant or its agents, provided, however, this release shall be in force and effect only with respect to loss or damage occurring during such time as Sublessor's policies covering such loss or damage shall contain a clause to the effect that this release shall not affect said policies or the right of Sublessor to recover thereunder. Sublessor agrees that its fire and other casualty insurance policies shall include such a clause confirming the foregoing.

F. To the fullest extent permitted by law, Sublessor shall indemnify and save harmless Subtenant from and against any and all injury, liability, loss or damage, penalties or judgments, and from and against any claims, actions, proceedings, and expenses and costs in connection therewith, including reasonable counsel fees, arising from injury to person or property sustained by anyone in and about Building A, the Demised Premises or the Common Areas by reason of an act or omission of Sublessor, or Sublessor's officers, agents, servants, employees or contractors. Such indemnity shall include all reasonable legal fees in Subtenant's defense of any suit or action against Subtenant alleging any such act or omission of Sublessor.

18. Fire and Other Casualty

If the Demised Premises or any part thereof shall be damaged or destroyed by fire, the elements or other casualty during the term of this Sublease, then Subtenant shall give notice thereof to Parent Landlord and Sublessor.

(A). Substantial Damage

If Building A or any part thereof shall be damaged by fire or casualty during the last two (2) years of the term of the Sublease and repair and restoration will, in Parent Landlord's contractor's reasonable opinion, take more than six (6) months, Subtenant may, as its option, terminate this Sublease by notifying Parent Landlord and Sublessor in writing of such termination within forty five (45) days after Subtenant shall have been advised of Parent Landlord's contractor's estimated time of restoration. If this Sublease is so terminated, Rent shall be proportionately abated as of the date of such damage.

(B). Restoration

If the Demised Premises or the internal Common Areas of Building A or Common Areas used by Subtenant shall be damaged by fire or casualty prior to the last two (2) years of the term of this Sublease, or if Subtenant has the right to terminate this Sublease pursuant to the prior paragraph but does not do so, Sublessor shall enforce its rights under the Parent Lease (including without limitation Parent Landlord's restoration obligations set forth in Section 17.02 of the Parent Lease), but Sublessor shall not be obligated to enforce its self-help rights set forth in Section 22.06 of the Parent Lease.

If reconstruction is not substantially complete within eighteen (18) months after the date of the fire or casualty (such eighteen (18) month period to be extended by not more than two (2) months for force majeure), Subtenant may terminate this Sublease by giving notice to Sublessor prior to substantial completion of such reconstruction.

In addition, if more than fifty percent (50%) of Building A is destroyed, Sublessor may, without notice from Subtenant, to the extent permitted under the Parent Lease, terminate the Parent Lease, and this Sublease shall terminate simultaneously therewith. Any termination of this Sublease hereunder shall have the effect as if the termination date were the expiration date of this Sublease. If this Sublease is not terminated, Sublessor shall enforce its rights under the Parent Lease to cause Parent Landlord to restore such damage or destruction to substantially the same condition that existed prior to such damage or destruction if it is required to do so pursuant to the Parent Lease. In the event of any such damage or destruction, if Subtenant does not terminate this Sublease, Subtenant shall be entitled to a proportionate abatement of Rent during the time and to the extent Subtenant is unable to conduct business in the Demised Premises.

19. Eminent Domain

A. If the Demised Premises or Building A or the Common Areas necessary for Subtenant to conduct its business in the Demised Premises in that manner then being conducted should be the subject of a Total Taking (as defined in the Parent Lease), then this

Sublease shall terminate as of the date when physical possession of the Demised Premises, Building A, or such Common Areas are taken by the condemning authority. If there occurs a Partial Taking (as defined in the Parent Lease) which renders the Demised Premises or such Common Areas unsuitable for Tenant's operation of its business in the Demised Premises in the manner then being conducted, Subtenant may terminate this Sublease by giving written notice thereof to Sublessor within forty five (45) days the right of election accrues, in which event this Sublease shall terminate as of the date the affected portion of the Demised Premises or such Common Areas are taken by the condemning authority. If upon such Partial Taking this Sublease is not terminated, Rent shall be abated by an amount representing the part of the Rent properly allocable to the portion of the Demised Premises or such Common Areas so taken and Sublessor, at the request of Subtenant, shall enforce Sublessor's rights set forth in Section 18 of the Parent Lease.

B. Sublessor reserves to itself, and Subtenant assigns to Sublessor, all rights to damages accruing on account of any taking under the power of eminent domain or by reason of any act of any public or quasi-public authority for which damages are payable. Subtenant agrees to execute such instruments of assignments as may be reasonably required by Sublessor or Parent Landlord in any proceeding for the recovery of such damages if requested by Parent Landlord or Sublessor, and to turn over to Sublessor any damages that may be recovered in such proceeding. It is agreed and understood, however, the Sublessor does not reserve to itself, and Subtenant does not assign to Sublessor, any damages payable for movable trade fixtures installed by Subtenant or any person claiming under Subtenant at the sole cost of Subtenant or any person claiming under Subtenant, or any damages which are considered "special damages" to Subtenant, it being understood and agreed that the term "special damages" as used in this sentence shall not be construed to include any damage to Subtenant arising solely from Subtenant's loss of its leasehold interest herein as the result of any appropriation by eminent domain or any act of any public authority for which damages are payable.

20. Defaults

A. If Subtenant shall (i) fail to pay any installment of Rent within seven (7) days after notice that such payment is overdue; or (ii) default in the performance or observance of any covenant or agreement of this Sublease (other than a default involving the payment of money) which default is not cured within twenty (20) days after the giving of notice thereof by Sublessor, unless such default is of such a nature that it cannot be cured within such twenty (20) day period, then no default shall occur so long as Subtenant shall commence the curing of the default within said twenty (20) day period and shall thereafter diligently prosecute the curing of the same); or (iii) default under the Parent Lease after any applicable notice and cure periods resulting directly or indirectly from the action of Subtenant (provided Sublessor promptly provides Subtenant with a copy of any notice thereof given to Sublessor by the Parent Landlord); or (iv) abandon all or any portion of the Demised Premises; or (v) be declared bankrupt or insolvent according to law or if a petition under any insolvency or bankruptcy law is filed by or against Subtenant or if any assignment shall be made of Subtenant's property for the

benefit or creditors and such petition or assignment is not dismissed or released within sixty (60) days; then, in any of such cases, Sublessor lawfully, may immediately, or at any time thereafter, and without any further notice or demand, enter into and upon the Demised Premises or any part thereof in accordance with applicable laws in the name of the whole, by force or otherwise, and hold the Demised Premises as if this Sublease had not been made, and expel Subtenant and those claiming under Subtenant and remove its or their property (forcibly, if necessary) without being taken or deemed to be guilty of any manner of trespass (or Sublessor may send notice to Subtenant of the termination of the term of this Sublease), and upon entry as aforesaid (or in the event that Sublessor shall send to Subtenant notice of termination as above provided, on the fifth (5th) day next following the date of the sending of such notice), the term of this Sublease shall terminate. Subtenant hereby waives any right to any statutory right to cure and Subtenant agrees that this Sublease shall terminate and Sublessor shall be entitled to re-entry and possession in accordance with the terms hereof. Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not be in default under this Sublease unless Subtenant does not cure such default within the applicable notice and cure periods set forth above in this Section 20A.

B. Upon the occurrence of any such events of default and the passage of any applicable notice and cure periods without cure by Subtenant, Sublessor shall have the option to pursue any one or more of following remedies without any notice or demand whatsoever:

Terminate this Sublease, in which event Subtenant shall immediately surrender the Demised Premises to Sublessor, and if Subtenant fails to do so, Sublessor may, without prejudice to any other remedy which it may have for possession or arrearages in Rent, enter upon and take possession of the Demised Premises by picking or changing locks or any other means deemed necessary or convenient by Sublessor and lock-out, expel or remove Subtenant and any other person who may be occupying the Demised Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor; except as otherwise set forth below, Subtenant shall remain liable to Sublessor for the payment of the Rent herein specified (both accrued and unaccrued, provided any accrued sums shall be immediately due and payable and unaccrued sums shall be due and payable as and when the same become due as set forth elsewhere in this Sublease) and for the amount of all loss and damage which Sublessor may suffer by reason of Subtenant's default. Subtenant agrees that Sublessor shall only be required to obtain one (1) judgment (which judgment may be obtained immediately following termination of this Sublease as herein provided) for the full amount of all such Rent and other amounts and shall not be required to sue each month, or from time to time therefor, provided that Subtenant shall be required to pay such judgment in installments, at the respective times such Rent and other amounts would have become due under this Sublease thereafter if this Sublease had not then been terminated. Sublessor shall use commercially reasonable efforts to mitigate damages. Sublessor and Subtenant agree that commercially reasonable efforts shall mean that Sublessor shall list the Demised Premises with a real estate agent. If Sublessor so elects, Sublessor may relet the Demised Premises on such terms as Sublessor may deem advisable and receive the rent therefore (and no subletting to

any third party shall be for less than fifty percent (50%) of the fair market rental value of the Demised Premises, and if the Demised Premises is then actively tenanted by Sublessor or an affiliate or subsidiary of Sublessor, then such tenancy shall be treated for purposes of mitigation only as a sublet for fifty percent (50%) of the fair market rental value of the Demised Premises); and Subtenant's obligation to pay Rent pursuant to this paragraph shall be reduced by the amount of rent and other amounts actually received by Sublessor (except as otherwise set forth herein) for the corresponding period of this Sublease pursuant to such reletting.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedies provided by law or in equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rent due Sublessor hereunder or of any damages accruing to Sublessor by reason of the violation of any of the terms, provisions and covenants herein contained. Forbearance by Sublessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. In determining the amount of loss and damage which Sublessor may suffer by reason of termination of this Sublease or by reason of Subtenant's default in the event of repossession of the Demised Premises by Sublessor or the deficiency arising by reason of any reletting of the Demised Premises by Sublessor as above provided, there shall be added to such loss or damage or such deficiency all expenses of repossession and any reletting of the Demised Premises (including without limitation, reasonable costs of repairs, remodeling and decoration following repossession or in order to relet, reasonable costs of removing and storing Subtenant's property, costs of advertising, costs of concessions granted to any replacement Subtenant in connection with any reletting, brokerage fees, attorneys' fees and expenses and similar expenses). Sublessor shall have the right to bring an action to collect one or more installments of the amount due by Subtenant to Sublessor hereunder without prejudicing Sublessor's right to later bring similar action to collect any subsequent installment of such amount due Sublessor. In no event shall Subtenant be entitled to the excess of any monthly rentals and other payments collected by Sublessor as a result of any reletting of the Demised Premises over the monthly rentals and other payments provided for in this Sublease. To the extent permitted by applicable law, Subtenant agrees that the provisions of this Sublease shall supersede any conflicting provisions of any applicable statute or law with respect to the rights of Subtenant in the event of a breach of this Sublease by Subtenant if such breach is not cured within any applicable notice and cure period; and, without limiting the foregoing, Subtenant hereby agrees that if Sublessor changes the door lock of the Demised Premises following an event of default that is not cured within applicable notice and cure periods by Subtenant, in no event shall Sublessor have any obligation to provide Subtenant a key to the Demised Premises, notwithstanding any payment by Subtenant to Sublessor of any delinquent Rent or any other attempt by Subtenant to cure such event of default; and Subtenant also hereby waives notice of any breach, termination or forfeiture of this Sublease or of any reentry or repossession of the Demised Premises, except as expressly provided for in this Sublease.

C. Subtenant shall save Sublessor harmless from and indemnify Sublessor against, any and all loss, liability, damage, claims or cause of action imposed upon or suffered

or incurred by the Sublessor and resulting from or arising out of Subtenant's failure to comply with any term, condition or obligation contained in this Sublease or in the Parent Lease and herein agreed to be performed and observed by Subtenant.

Sublessor shall save Subtenant harmless from and indemnify Subtenant against, any and all loss, liability, damage, claims or cause of action imposed upon or suffered or incurred by the Subtenant and resulting from or arising out of Sublessor's failure to comply with any term, condition or obligation contained in this Sublease or in the Parent Lease and herein agreed to be performed and observed by Sublessor.

D. If Subtenant shall default beyond applicable notice and cure periods in the performance or observance of any agreement or condition in this Sublease contained on its part to be performed or observed and shall not cure such default within the notice and cure periods set forth in Section 20A above, Sublessor may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Subtenant, and any reasonable and actual amount paid or any contractual liability incurred by Sublessor in so doing shall be deemed paid or incurred for the account of Subtenant and Subtenant agrees to (i) reimburse Sublessor for all such costs and expenses, including without limitation reasonable attorney's fees, together with interest on the amount of such costs and expenses at the Delinquency Rate (as defined in Section 22.06 of the Parent Lease) which shall be paid by Subtenant to Sublessor within thirty (30) days after invoice therefor and shall be recoverable as additional rent and (ii) save Sublessor harmless therefrom; provided that Sublessor may cure any such default as aforesaid prior to the expiration of said waiting period but after notice to Subtenant, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the real estate or Parent Landlord's or Sublessor's interest therein, or to prevent injury or damage to persons or property. In addition, Subtenant acknowledges that Parent Landlord may have similar rights under the Parent Lease, and Subtenant shall be responsible for Sublessor's obligations as tenant under the Parent Lease, in the event Parent Landlord exercises such right as a result of a default of Subtenant that is not cured within any applicable notice and cure period.

21. Surrender

All alterations, additions, improvements, and fixtures (other than Subtenant's unattached, readily movable furniture and equipment) which are made or installed by or at the request of Subtenant upon the Demised Premises shall remain upon and be surrendered with the Demised Premises and become the property of Sublessor at the termination of this Sublease without credit or compensation; provided, however, if Sublessor requests their removal (as a condition to and at the same time as consenting to an alteration, Subtenant shall remove the same and restore the Demised Premises to its original condition prior to the making of such alterations or improvements at Subtenant's expense. Notwithstanding the foregoing, upon expiration or termination of this Sublease, Subtenant shall, (a) at Subtenant's expense, remove all of its unattached, movable trade fixtures and personal property from the Demised Premises and repair any damage occasioned by such removal and (b) not be required to

remove any portion of Landlord's Work. Any such trade fixtures or other property of Subtenant not so removed shall be deemed abandoned by Subtenant, and Sublessor at Sublessor's option, shall have the right to retain all or any part of such property, in which event title thereto shall thereupon vest in Sublessor, or remove from the Demised Premises and dispose of in any manner all or any part of such property, in which latter event Subtenant shall pay to Sublessor as additional rental within ten (10) days of demand the actual expense of such removal and disposition and the actual expense of repair or damage to the Demised Premises resulting from or caused by such removal. The obligations of this Paragraph 21 shall survive the termination of this Sublease. At the termination or expiration of this Sublease, Subtenant shall remove Subtenant's signs (other than signs installed by Sublessor) from the exterior and interior of the Demised Premises and repair any damage resulting therefrom.

22. Parent Landlord and Sublessor's Access to the Demised Premises

Parent Landlord and Sublessor each shall have the right to enter upon the Demised Premises at any time. Sublessor shall promptly deliver to Subtenant any notice that Parent Landlord gives to Subtenant in connection with any access by Parent Landlord to the Demised Premises. Sublessor shall have the right to enter upon the Demised Premises after providing at least twenty-four (24) hours telephone notice to Subtenant for the purpose of inspecting the same, or of making any repairs, alterations or improvements to the Demised Premises, or of exercising any of the rights and obligations of Sublessor hereunder or of Parent Landlord under the Parent Lease, as the case may be or of showing the Demised Premises to prospective purchasers or lenders (but not to prospective tenants except during the last year of the term of this Sublease), without being liable to Subtenant (except as otherwise set forth in this Sublease) for any claim for damages or indemnification from Parent Landlord or Sublessor or abatement of rental or other charges hereunder. During all such access, Subtenant shall have the right to accompany Sublessor and Sublessor shall use commercially reasonable efforts to minimize interference with the operation of Subtenant's business. Notwithstanding the foregoing, Sublessor shall have the right to access the Demised Premises without notice (a) in the event of an emergency, provided that Sublessor give whatever notice is practical under the circumstances, if any, to Subtenant, and (b) for Sublessor to perform regularly schedules nightly cleaning of the Demised Premises.

23. Real Estate Brokers

Sublessor and Subtenant represent and warrant to each other that they have not dealt with any brokers in connection with this Sublease other than Richards, Barry, Joyce and Partners, LLC and R. W. Holmes (collectively, the "Named Brokers") as brokers in connection with this Sublease, and no other broker or finder is entitled to any commission in connection with this Sublease. The Brokers shall be paid by Sublessor in accordance with the terms of a separate brokerage agreement. Sublessor and Subtenant agree to indemnify, defend and hold the other and their employees and agents harmless from and against any claims made by any broker or finder as a result of dealings with the other party other than the Named Brokers for a commission or fee in connection with this Sublease.

24. Successors and Assigns

The words "Sublessor" and "Subtenant" and the pronouns referring thereto, as used in this Sublease, shall mean, where the context requires or admits, the persons named herein as Sublessor and Subtenant, respectively, and their respective heirs, legal representatives, successors and assigns, irrespective of whether singular or plural, masculine, feminine or neuter. Except as hereinafter provided otherwise, the agreements and conditions in this Sublease contained on the part of Sublessor to be performed and observed shall be binding upon Sublessor and its heirs, legal representatives, successors and assigns and shall enure to the benefit of Subtenant and its heirs, legal representatives, successors, and assigns; and the agreements and conditions on the part of Subtenant to be performed and observed shall be binding upon Subtenant and its heirs, legal representatives, successors and assigns and shall enure to the benefit of Sublessor and its heirs, legal representatives, successors and assigns. The word "Sublessor", as used herein, means only the owner for the time being of Sublessor's interest in this Sublease and the transferee assumes all of Sublessor's obligations set forth in this Sublease, that is, in the event of any transfer of Sublessor's interest in this Sublease the transferor shall cease to be liable, and shall be released for all liability, for the performance or observance of any agreements or conditions on the part of Sublessor to be performed or observed subsequent to the time of said transfer, it being understood and agreed that from and after said transfer the transferee shall be liable for the performance and observance of said agreements and conditions accruing thereafter. If Subtenant shall consist of more than one person or if there shall be a guarantor of Subtenant's obligations hereunder, then the liability of all such persons, including the guarantor, if any, shall be joint and several and shall be deemed to mean any one of such persons. No trustee, shareholder or beneficiary of any trust and no participant in any joint venture or partnership and no individual who or which holds Sublessor's interest in this Sublease shall be personally liable for any of the agreements expressed or implied, hereunder, except that such agreements shall, as the case may be, be binding (i) upon the trustees of said trust as trustees, but not individually, and upon the trust estate, or (ii) upon an individual, group of individuals jointly or severally, corporation, joint venture or partnership only to the extent of his, its or their ownership interest in the Parent Lease.

25. Quiet Enjoyment

Sublessor agrees that so long as is not in default of its obligations set forth in this Sublease after any applicable notice and cure periods, Subtenant shall and may peaceably and quietly have, hold and enjoy the Demised Premises during the term of this Sublease without any manner of hindrance or molestation by Sublessor or anyone claiming through or under Sublessor subject, however, to the terms and conditions of the Parent Lease, this Sublease and any mortgages or other instruments to which this Sublease is subordinate.

26. Notices

All notices and other communications authorized or required hereunder shall be in writing and shall be given via hand delivery by a commercial courier that only delivers upon signed receipt, by mailing the same by certified or registered mail, return receipt requested, postage prepaid, or by recognized overnight courier service which delivers only upon signed receipt of the addressee such as Federal Express. If given to Subtenant the same shall be mailed to Subtenant at (a) prior to the time Subtenant takes occupancy of the Demised Premises, at 205 Newbury Street, Suite 101, Framingham, Massachusetts 01701, Attn: Chief Financial Officer and General Counsel, and (b) after Subtenant takes occupancy of the Demised Premises, at the Demised Premises, Attn: Chief Financial Officer and General Counsel, or to such other person or as such other address as Subtenant may hereafter designate by notice to Sublessor; and if given to Sublessor the same shall be mailed to Sublessor at 770 Cochituate Road, P.O. Box 9357, Framingham, Massachusetts 01701, Attention: Office Services, with a copy to the same address, Attention: Vice President-Real Estate, with rental payments mailed to Sublessor at P.O. Box 9357, Framingham, MA 01701, or to such other person or at such other address as Sublessor may hereafter designate by notice to Subtenant.

27. Subordination

Subtenant agrees that whenever Sublessor shall subordinate the Parent Lease to the lien of any present or future mortgage, or deed of trust, this Sublease shall automatically also be subordinated to the mortgage involved. Subtenant agrees that although the foregoing provisions of this Article shall be self-operative, Subtenant shall execute, acknowledge and deliver to Sublessor any instrument which the mortgagee may request in order to confirm such subordination of this Sublease.

28. Estoppel Certificate

Sublessor and Subtenant agree that they will, from time to time, within fifteen (15) days after written request therefor by the other party (or such shorter time permitted by the Parent Lease if required by the Parent Landlord relating to the Demised Premises), execute and deliver to the other a statement that this Sublease is in full force and effect, that there are no defaults under the Sublease and such other information that may be reasonably requested.

29. Attorney's Fees

In the event either party is required to commence legal proceedings in order to enforce its rights or protect its interests hereunder, the prevailing party in such legal proceedings shall be paid its reasonable attorneys' fees from the other party.

30. Short Form Lease

Upon the request of either party, Sublessor and Subtenant shall execute a short form lease for recording, which shall contain such form and substance as either party shall reasonably request, with the exception of the Rent reserved hereunder. The party requesting such short form lease shall be responsible for the payment of all governmental charges attributable to the recording thereof.

31. Holding Over

If Subtenant or any person claiming under Subtenant shall remain in possession of the Demised Premises or any part thereof after the expiration of the term of this Sublease without any agreement in writing between Sublessor and Subtenant with respect thereto, the person remaining in possession shall be deemed a tenant-at-sufferance, and during such holding over, minimum rent shall be payable at a rate equal to one hundred fifty percent (150%) of the rate in effect immediately prior to the expiration of the term. If such retention of possession of the Demised Premises or any part thereof shall cause Sublessor to be liable to Parent Landlord, including, without limitation, rent or other charges, Subtenant shall defend and indemnify Sublessor against, and hold Sublessor harmless from, any such liability to Parent Landlord.

32. Waivers

Failure of Sublessor or Subtenant to complain of any act or omission on the part of the other, no matter how long the same may continue, shall not be deemed to be a waiver by them of any of their rights set forth in this Sublease. No waiver by Sublessor or Subtenant at any time, express or implied, of any breach of any provision of this Sublease shall be deemed a waiver of a breach of any other provision of this Sublease or a consent to any subsequent breach of the same or any other provision. If any action by Subtenant shall require the consent or approval of the Sublessor, such consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. In any situation in which the consent or approval (both referred to herein as "consent") of Parent Landlord shall be required pursuant to the Parent Lease, the failure, refusal or omission of Parent Landlord to grant such consent in accordance with the Parent Lease, after Sublessor has requested the same in accordance with any request made of Sublessor herein by Subtenant, shall be conclusively deemed reasonable grounds for withholding consent by Sublessor. No payment by Subtenant or acceptance by Sublessor of a lesser amount than the amount actually due shall be deemed to be anything but payment on account. Receipt of rent by Sublessor with knowledge of any breach of this Sublease by Subtenant shall not be deemed a waiver of such breach, and no provision of this Sublease shall be deemed to have been waived by Sublessor unless such waiver shall be in writing and signed by Sublessor. Any and all rights and remedies which either party may have under this Sublease or by operation of law either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

33. Security Deposit

Within ten (10) days of the date of this Sublease, Subtenant shall pay to Sublessor a sum equal to the first three (3) month's minimum rent due under this Sublease as security for the payment of all rents and the performance and observance of all agreements and conditions in this Sublease contained on the part of Subtenant to be performed or observed. In the event of any default or defaults in any such payment, performance or observance after the passage of any applicable notice and cure periods, Sublessor may apply said sum or the applicable part thereof, as the case may be, towards the curing of any such default or defaults and/or towards compensating Sublessor for any loss or damage arising from any such default or defaults. Upon the yielding up of the Demised Premises at the expiration or other termination of the term of this Sublease, provided there is then no ongoing default by Subtenant, any remaining amount of the security deposit not applied to cure any default shall be returned to Subtenant. Sublessor shall always have the right to apply said sum, or any part thereof, as aforesaid, in the event of any default or defaults if not cured during any applicable notice and cure periods, without prejudice to any other remedy or remedies which Sublessor may have, or Sublessor may pursue any other such remedy or remedies in lieu of applying said sum or any part thereof. No interest shall be payable on the security deposit or any part thereof. If Sublessor shall apply said sum or any part thereof, as aforesaid, Subtenant shall upon demand pay to Sublessor the amount so applied by Sublessor, to restore the security to the amount required under the first sentence of this Section. Whenever the holder of Sublessor's interest in this Sublease, whether it be the Sublessor named in this Sublease or any transferee of said Sublessor, immediate or remote, shall transfer its interest in this Sublease, said holder shall pay over to its transferee the unapplied portion of Subtenant's security deposit, and thereafter said holder shall be released from any and all liability to Subtenant with respect to said security deposit or its application or return, it being understood that Subtenant shall thereafter look only to such transferee with respect to said sum, its application and return.

In lieu of a cash security deposit, Subtenant shall have the right and option to deliver a letter of credit (the "Letter of Credit") from a highly rated United States financial institution (Bank of America shall be deemed acceptable), in form reasonably acceptable to Sublessor. The Letter of Credit shall (i) be unconditional, irrevocable, transferable, and payable to Sublessor solely upon presentment by Landlord or Landlord's agent, and (ii) contain an "evergreen" provision which provides that it is automatically renewed on an annual basis unless the issuer delivers sixty (60) days' prior written notice of cancellation to Sublessor. Without limiting any of Sublessor's rights or remedies hereunder, if the bank issuing the Letter of Credit provides Sublessor with a cancellation notice, Sublessor may immediately draw upon all or any part of the Letter of Credit and Subtenant. Any and all fees or costs charged by the issuer in connection with the issuance, maintenance or transfer of the Letter of Credit shall be paid by Subtenant. The Letter of Credit shall remain effective for sixty (60) days after the expiration or termination of this Sublease. If Subtenant defaults with respect to any provision of this Sublease, including but not limited to the provisions relating to the payment of Rent, Sublessor may, but will not be required to, draw upon all or any part of Subtenant's Letter of Credit. If

any of the proceeds of the Letter of Credit are not applied immediately to cure any default of Subtenant, Sublessor shall hold such unapplied proceeds as a cash security deposit pursuant to the terms set forth above and Sublessor may use, apply, or retain the proceeds of the Letter of Credit to the same extent that Sublessor may use, apply or retain a cash security deposit. If any portion of the Letter of Credit is drawn upon, Subtenant will cause the Letter of Credit to be increased to the amount required as the security deposit under this Sublease within five (5) business days after written demand from Sublessor, and in such event, provided there is then no outstanding default by Subtenant, any proceeds of the Letter of Credit retained by Sublessor as a cash security deposit and not applied to cure any default shall be returned to Subtenant.

If at the time Subtenant exercises its option to extend the term of this Sublease for the Extension Period, Subtenant has a market capitalization of One Billion Five Hundred Million Dollars (\$1,500,000,000.00) or more, then the amount of the Security Deposit shall be reduced to one (1) month's minimum rent.

34. Force Majeure Delays

Except for obligations pursuant to the Parent Lease which do not contain a provision substantially the same as the following, in any case where either party hereto is required to do any act (other than make a payment of money), delays caused by or resulting from Act of God, war, civil commotion, fire, the elements or other casualty, labor difficulties, general shortages of labor, materials or equipment, or other causes beyond such party's reasonable control, shall not be counted in determining the time when the performance of such act must be completed, whether such time be designated by a fixed time, a fixed period of time, or "a reasonable time". In any case where work is to be paid for out of insurance proceeds or condemnation awards, due allowance shall be made, both to the party required to perform such work and to the party required to make such payment, for delays in the collection of such proceeds and awards.

35. Right of First Refusal

Provided that Subtenant is not in default of the terms of this Sublease, after any applicable notice and cure periods, Subtenant shall have a right of first refusal to lease vacant space in Building A. The right of first refusal shall be as follows: If Sublessor obtains an accepted offer in writing to lease all or any portion of the remainder of Building A (the "RFR Space") with a party that is not affiliated with Sublessor (the "Proposed Subtenant"), Sublessor shall provide written notice to Subtenant offering to Subtenant such RFR Space on the terms set forth in such letter of intent (the "Right of First Refusal Notice"), which notice shall include a copy of any letter of intent or other writing with such party. Sublessor shall not make verbal offers or acceptances as a means to circumventing Subtenant's rights under this Section 35. Subtenant shall have seven (7) business days to respond to such Right of First Refusal Notice. Subtenant's failure to respond in such period shall be deemed a rejection. If Subtenant rejects the Right of First Refusal Notice, and Sublessor does not consummate a sublease for such RFR Space within six (6) months after the date of the Right of First Refusal Notice, then Subtenant

shall continue to have a right of first refusal which shall be triggered only by Sublessor's execution of a new letter of intent or other writing. Notwithstanding the foregoing, if Subtenant rejects any Right of First Refusal Notice and Sublessor consummates a sublease for such RFR Space within six (6) months of the applicable Right of First Refusal Notice, then all future rights of first refusal with respect to such RFR space only, shall be extinguished.

If Subtenant accepts such right of first refusal, (a) Sublessor and Subtenant shall amend this Sublease to add the applicable RFR Space to the Demised Premises and to otherwise reflect the terms and conditions set forth in the letter of intent or other writing delivered by Sublessor with its Right of First Refusal Notice, (b) Subtenant's Taxes Proportionate Share and Subtenant's Operating Expenses Proportionate Share shall be adjusted to include the square footage of the RFR Space, and (c) the RFR Space shall constitute a portion of the Demised Premises and be subject to and have the benefit of the provisions of this Sublease.

36. Access

Subtenant shall have twenty four (24) hour access to the Demised Premises throughout the term of the Sublease. Building A has a key-card system that is managed by Parent Landlord. Sublessor shall provide Subtenant with initial security cards for all of Subtenant's employees that will work at the Demised Premises. After the Commencement Date, additional cards may be obtained by Subtenant from the Parent Landlord at their standard cost (currently Five Dollars (\$5.00) per badge, subject to increase over time).

37. After-Hours HVAC

The normal business hours for Building A are Monday through Friday 8:00 a.m. to 7:00 p.m. and Saturday from 9:00 a.m. to 1:00 p.m. HVAC service will be provided to Subtenant during such normal business hours and billed to Subtenant as part of the Subtenant Operating Expenses Proportionate Share. After hours HVAC (i.e., between 7:01 p.m. and 7:59 a.m.) requested by the Subtenant shall be billed to the Subtenant at a commercially reasonable rate. While Sublessor is managing the interior of Building A, after hours HVAC may be obtained by calling Sublessor at least twenty four (24) hours in advance at 774-308-2657. The cost for after-hours HVAC as of the date of this Sublease is Seventy Five Dollars (\$75.00) per hour. If at any time Parent Landlord is managing the Building, after-hours HVAC may be coordinated with Parent Landlord.

38. Cleaning

Sublessor shall perform nightly cleaning in the Demised Premises in accordance with the specifications in Schedule C attached hereto.

39. Miscellaneous

A. If any provisions of this Sublease shall be determined to be void by any court of competent jurisdiction then such determination shall not affect any other provisions of this Sublease, all of which other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Sublease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid. It is agreed that the provisions of this Sublease shall be interpreted pursuant to the laws of the jurisdiction in which the Demised Premises are located.

B. This instrument contains the entire and only agreement between the parties, and no oral statements or representations or prior written matter not contained in this instrument shall have force and effect. This Sublease shall not be modified in any way except by a writing subscribed by both parties. Each signatory hereto hereby represents and affirms that such signatory is authorized to execute this Sublease on behalf of the party for whom such signatory purports to be executing this Sublease.

C. Wherever in this Sublease provision is made for the doing of any act by any person it is understood and agreed that said act shall be done by such person at its own cost and expense unless a contrary intent is expressed.

D. The parties hereto shall, and they hereby do, waive trial by jury in any action arising out of or in any way connection with this Sublease, the relationship of Sublessor and Subtenant, Subtenant's use or occupancy of the Demised Premises and/or any claim of injury, loss or damage.

E. The captions used as headings for the various sections of this Sublease are used only as a matter of convenience for reference and are not to be considered a part of this Sublease or to be used in determining the intent of the parties to this Sublease.

F. Sublessor and Subtenant warrant and represent to the other that neither it nor any of its affiliates is currently the subject of any proceeding under federal or state bankruptcy, receivership, insolvency or similar laws and that no consents of third parties are necessary for the execution and performance of this Sublease by them. Sublessor and Subtenant shall defend, indemnify and save harmless the other from and against all losses, claims, demands, costs, and reasonable attorney's fees resulting from a breach of or inaccuracy in any of the representations, warranties and agreements set forth in this paragraph.

G. The submission of this Sublease for examination does not constitute an offer to enter into a sublease and this Sublease shall become effective only upon execution and delivery hereof by Sublessor and Subtenant.

40. Anti Bribery

Without limitation of any other term or provision of this Sublease:

(a) Sublessor and Subtenant warrant, represent, covenant and agree to and with the other that: (1) it shall comply with all applicable anti-bribery and anti-corruption laws, including the U.S. Foreign Corrupt Practices Act, and all other similar domestic applicable laws (“Anti-Corruption Laws”) in connection with the performance of its construction work or any other service or work for the benefit of the other with respect to the Demised Premises or this Sublease (the “Services”); (2) no payments of money, gifts or anything of value have been or shall be offered, promised or paid, directly or indirectly, to any person or entity or to influence the acts of any government official or member of their family or to obtain or receive an improper advantage in connection with the performance of the Services or any other service or work for the benefit of the other; (3) no payments of money, gifts or anything of value have been or shall be requested, received or accepted, directly or indirectly through any agent or intermediary, from any person or entity corruptly to influence the acts of such person or entity, or to influence the acts of any Government Official (as hereinafter defined) or member of their family, or to obtain or receive an improper advantage in connection with the Services or otherwise for the benefit of the other; (4) it has no direct or indirect legal, financial or other relationship(s) with any Government Official (or member of their family) involved with or affecting the Services; (5) it has not been charged with or convicted of bribery, corruption or fraud in connection with the performance of the Services or any other service or work for the benefit of the other; and (6) if Subtenant or Sublessor acts on behalf of the other during the performance of the Services, it has complied and shall comply with Sublessor’s Global Anti-Bribery Policy attached hereto as Schedule H. Sublessor and Subtenant shall promptly notify the other in writing of any change or charge regarding any of the representations made above.

(b) Sublessor and Subtenant covenant and agree to maintain for a period of at least five (5) years from the last performance of the Services, accurate books and records with respect to all expenditures, payments, fees incurred, paid or received in connection with performance of the Services, including invoices, receipts, statements of account and other supporting documentation. Sublessor and Subtenant shall have the right to conduct a review of all relevant records of the other for the purpose of evaluating compliance with all applicable Anti-Corruption Laws and this Section with respect to this Sublease. Sublessor and Subtenant shall make relevant books and records available to the other promptly upon request and shall reasonably cooperate with any request or inquiry relative to any possible violation of this Section.

(c) Violation of the foregoing shall be deemed a material breach of this Sublease, and notwithstanding anything to the contrary contained in this Sublease, shall entitle the other party to immediately terminate this Sublease upon written notice.

(d) As used herein, the term “Government Official” means any person exercising a public function and/or acting in an official capacity on behalf of a government agency, department, or instrumentality, political party, or candidate for political office, and includes officials or employees of federal, state, provincial, county or municipal governments or any department or agency thereof; any officers or employees of a company or business owned in whole or in part by a government; any officers or employees of a public international

organization; any political party or official thereof; or any candidate for political office. Government Officials include officials at every level of government, regardless of rank or position.

41. Cafeteria

Throughout the term of this Sublease, Subtenant's employees shall have the right to use the cafeteria located on the 1st floor of Building B as well as the outdoor dining area located outside such cafeteria. Subtenant shall save Sublessor harmless from and indemnify Sublessor harmless against any or all injury, loss or damage of whatever nature, or claims therefor in connection with Subtenant's employees' use of Sublessor's cafeteria except to the extent caused by Sublessor's negligence or willful misconduct. Notwithstanding the foregoing, Sublessor reserves the right to adjust the level of services with the food service provider based upon occupancy of the entire Building and use by occupants, provided that (a) at a minimum, the cafeteria shall throughout the term of this Sublease serve both hot and cold sandwiches and shall have a salad bar, and (b) the hours of operation for the food service in the cafeteria is no less 7:30 a.m. to 9:00 a.m. and 11:30 a.m. to 1:30 p.m. (the "Cafeteria Operating Hours"). Subtenant shall have the right and option to reserve, and Sublessor shall provide, the exclusive use of the cafeteria for Subtenant's use up to twelve (12) times per year outside Cafeteria Operating Hours, together with the right to order catering service for such meetings at Subtenant's sole cost, which right and option Subtenant may exercise by providing prior notice (which may be verbal or by email) to Sublessor specifying the date(s) of reservation.

42. Sitting Area.

Throughout the term of this Sublease, Subtenant's employees shall have the right to use the passageway and sitting area located on the first floor between Building A and Building B (as defined in the Parent Lease).

43. Fitness Center

Throughout the term of this Sublease, Subtenant's employees shall have the right to use at all times the fitness center and attendant locker rooms and showers (collectively, the "Fitness Center") located on the second (2nd) floor of Building C, at the rate of Fifty Dollars (\$50.00) per Fitness Center membership per year. Sublessor shall maintain the physical condition of the Fitness Center and the equipment therein in good working order. Sublessor shall ensure throughout the term of this Sublease that the Fitness Center contains comparable types and amounts of equipment as exists on the date of this Sublease. Subtenant shall save Sublessor harmless from and indemnify Sublessor harmless against any or all injury, loss or damage of whatever nature, or claims therefor in connection with Subtenant's employees' use of the Fitness Center except to the extent caused by a third-party or Sublessor's negligence or willful misconduct. Subtenant's employees who purchase a Fitness Center membership from Sublessor shall be required to sign Sublessor's waiver form before they will be provided with access to Sublessor's gym.

44. Payment to Subtenant

Within ten (10) days after execution and delivery of this Sublease by Sublessor and Subtenant, Sublessor shall pay Subtenant the sum of Thirty Thousand Dollars (\$30,000.00) for Subtenant's costs in connection with Subtenant's out-of-pocket costs incurred for its planned leasing of Building D, by wire transfer pursuant to wiring instructions attached hereto as Schedule F.

45. Subtenant Financing

Sublessor acknowledged and agrees that (a) unless and until granted by Subtenant or a court of competent jurisdiction, Sublessor shall have no security interest or lien in or on any of Subtenant's trade fixtures, personal property or other assets (collectively, "Subtenant's Assets"), and (b) Subtenant from time to time throughout the term of this Sublease may obtain financing secured by Subtenants Assets. In the event that Subtenant so obtains such financing, Sublessor agrees, at the request of Subtenant, to execute an agreement mutually satisfactory to Sublessor, Subtenant and such lender, acknowledging that Sublessor has no security interest or lien in Subtenant's Assets and waiving, releasing or subordinating any such security interest or lien. Sublessor agrees to negotiate such agreement in a timely manner.

46. Police Detail

While at least fifty percent (50%) of the premises leased by TJX under the Parent Lease is occupied (by Subtenant, Sublessor and/or others), Sublessor shall engage the local police to direct traffic at the entrance to the office park during Monday through Friday during the hours of 4:00 p.m. to 6:00 p.m. Since Sublessor pays one hundred percent (100%) of such cost, Subtenant shall pay its proportionate share of such cost based on a fraction, the numerator of which shall be the gross leasable area of the Demised Premises and the denominator of which shall be the gross leasable area of space leased by Sublessor under the Parent Lease. Sublessor shall invoice Subtenant monthly for its contribution towards the cost of the police detail.

IN WITNESS WHEREOF, each of the parties hereto have caused this instrument to be executed and delivered and its corporate seal to be affixed hereto, by its officers thereunto duly authorized, all as of the day and year first written above.

WITNESSES:

/s/ Susan Marchetti _____

/s/ Lisa A. Schwartz _____

WITNESS:

/s/ Heather D. Meterparel _____

SUBLESSOR:

THE TJX COMPANIES, INC.,
a Delaware corporation

By: /s/ Ann McCauley _____
Ann McCauley
Exec. Vice President, General Counsel and Secretary
and not individually

By: /s/ George Wilson _____
George Wilson
Corporate Controller
and not individually

SUBTENANT:

HEARTWARE INTERNATIONAL, INC.,
a Delaware corporation

By: /s/ Peter McAree _____
Peter McAree
Senior Vice President and Chief Financial Officer

**CERTIFICATION BY THE CHIEF EXECUTIVE OFFICER PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Douglas Godshall, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of HeartWare International, 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2013

/s/ Douglas Godshall

Douglas Godshall
President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION BY THE CHIEF FINANCIAL OFFICER PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Peter F. McAree, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of HeartWare International, 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 and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2013

/s/ Peter F. McAree

Peter F. McAree
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION BY THE CHIEF EXECUTIVE OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of HeartWare International, Inc. (the "Company") for the quarterly period ended September 30, 2013 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned President and Chief Executive Officer of the Company hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that based on his knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2013

/s/ Douglas Godshall

Douglas Godshall
President and Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION BY THE CHIEF FINANCIAL OFFICER PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of HeartWare International, Inc. (the "Company") for the quarterly period ended September 30, 2013 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned Executive Vice President and Chief Financial Officer of the Company hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that based on his knowledge:

- (1) the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2013

/s/ Peter F. McAree

Peter F. McAree
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)