

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

**FORM 10-Q**

(Mark One)

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

For the Quarterly Period Ended June 30, 2021

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number: 0-12305

**REPRO MED SYSTEMS, INC.**

(Exact name of registrant as specified in its charter)

**New York**

(State or other jurisdiction of incorporation or organization)

**13-3044880**

(I.R.S. Employer Identification No.)

**24 Carpenter Road, Chester, New York**

(Address of principal executive offices)

**10918**

(Zip Code)

**(845) 469-2042**

(Registrant's telephone number, including area code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
<b>Common stock, \$0.01 par value</b>	<b>KRMD</b>	<b>The Nasdaq Stock Market</b>

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

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

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

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

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

As of August 11, 2021, 44,511,162 shares of common stock, \$0.01 par value per share, were outstanding, which excludes 3,420,502 shares of treasury stock.

---

**REPRO MED SYSTEMS, INC.**  
**FORM 10-Q**  
**FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2021**  
**TABLE OF CONTENTS**

	<u>PAGE</u>
PART I. FINANCIAL INFORMATION	
ITEM 1. Financial Statements (Unaudited)	3
Balance Sheets as of June 30, 2021 (Unaudited) and December 31, 2020	3
Statements of Operations (Unaudited) for the three and six months ended June 30, 2021 and 2020	4
Statements of Cash Flows (Unaudited) for the six months ended June 30, 2021 and 2020	5
Statements of Stockholders' Equity (Unaudited) for the three and six months ended June 30, 2021 and 2020	6
Notes to Financial Statements	7
ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	16
ITEM 3. Quantitative and Qualitative Disclosures About Market Risk	21
ITEM 4. Controls and Procedures	21
PART II. OTHER INFORMATION	
ITEM 1. Legal Proceedings	21
ITEM 1A. Risk Factors	21
ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds	21
ITEM 6. Exhibits	22
Signatures	23

**PART I — FINANCIAL INFORMATION**

**Item 1. Financial Statements (Unaudited)**

**REPRO MED SYSTEMS, INC.  
BALANCE SHEETS  
(UNAUDITED)**

	<b>June 30, 2021</b>	<b>December 31, 2020</b>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 26,538,478	\$ 27,315,286
Accounts receivable less allowance for doubtful accounts of \$ 24,469 for June 30, 2021, and December 31, 2020	2,577,400	2,572,954
Inventory	7,562,750	6,829,772
Prepaid expenses	461,553	807,780
<b>TOTAL CURRENT ASSETS</b>	<b>37,140,181</b>	<b>37,525,792</b>
Property and equipment, net	1,110,550	1,167,623
Intangible assets, net of accumulated amortization of \$ 232,820 and \$ 199,899 at June 30, 2021 and December 31, 2020, respectively	834,644	843,587
Operating lease right-of-use assets	166,483	236,846
Deferred income tax assets, net	1,327,230	125,274
Other assets	19,812	19,812
<b>TOTAL ASSETS</b>	<b>\$ 40,598,900</b>	<b>\$ 39,918,934</b>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 1,005,653	\$ 624,920
Accrued expenses	1,771,666	2,610,413
Accrued payroll and related taxes	390,326	287,130
Finance lease liability – current	1,030	2,646
Operating lease liability – current	142,450	141,293
<b>TOTAL CURRENT LIABILITIES</b>	<b>3,311,125</b>	<b>3,666,402</b>
Operating lease liability, net of current portion	24,033	95,553
<b>TOTAL LIABILITIES</b>	<b>3,335,158</b>	<b>3,761,955</b>
Commitments and contingencies (Refer to Note 3)		
<b>STOCKHOLDERS' EQUITY</b>		
Common stock, \$0.01 par value, 75,000,000 shares authorized, 47,910,676 and 46,680,119 shares issued 44,490,174 and 43,259,617 shares outstanding at June 30, 2021, and December 31, 2020, respectively	479,106	466,801
Additional paid-in capital	39,376,131	35,880,986
Treasury stock, 3,420,502 shares at June 30, 2021 and December 31, 2020, respectively, at cost	(3,843,562)	(3,843,562)
Retained earnings	1,252,067	3,652,754
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>37,263,742</b>	<b>36,156,979</b>
<b>TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY</b>	<b>\$ 40,598,900</b>	<b>\$ 39,918,934</b>

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

**REPRO MED SYSTEMS, INC.**  
**STATEMENTS OF OPERATIONS**  
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
NET SALES	\$ 5,528,174	\$ 7,708,904	\$ 10,959,125	\$ 14,038,913
Cost of goods sold	2,317,990	2,799,024	4,517,087	5,340,823
Gross Profit	3,210,184	4,909,880	6,442,038	8,698,090
<b>OPERATING EXPENSES</b>				
Selling, general and administrative	4,085,945	3,201,831	9,078,774	5,964,811
Litigation	—	2,346,914	—	2,446,072
Research and development	386,878	298,196	723,719	554,221
Depreciation and amortization	118,415	94,940	233,888	182,164
Total Operating Expenses	4,591,238	5,941,881	10,036,381	9,147,268
Net Operating Loss	(1,381,054)	(1,032,001)	(3,594,343)	(449,178)
<b>Non-Operating Income/(Expense)</b>				
Gain/(Loss) on currency exchange	1,239	(2,594)	(14,478)	(13,091)
(Loss)/Gain on disposal of fixed assets, net	—	(5,522)	736	(5,522)
Interest income, net	9,950	(5,002)	19,721	14,028
TOTAL OTHER INCOME/(EXPENSE)	11,189	(13,118)	5,979	(4,585)
LOSS BEFORE INCOME TAXES	(1,369,865)	(1,045,119)	(3,588,364)	(453,763)
Income Tax Benefit/(Expense)	245,316	(30,919)	1,187,677	(172,847)
NET LOSS	<u>\$ (1,124,549)</u>	<u>\$ (1,076,038)</u>	<u>\$ (2,400,687)</u>	<u>\$ (626,610)</u>
<b>NET LOSS PER SHARE</b>				
Basic	<u>\$ (0.03)</u>	<u>\$ (0.03)</u>	<u>\$ (0.05)</u>	<u>\$ (0.02)</u>
Diluted	<u>\$ (0.03)</u>	<u>\$ (0.03)</u>	<u>\$ (0.05)</u>	<u>\$ (0.02)</u>
<b>WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING</b>				
Basic	<u>44,489,853</u>	<u>40,361,924</u>	<u>44,226,936</u>	<u>40,018,559</u>
Diluted	<u>44,489,853</u>	<u>40,361,924</u>	<u>44,226,936</u>	<u>40,018,559</u>

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

**REPRO MED SYSTEMS, INC.**  
**STATEMENTS OF CASH FLOWS**  
**(UNAUDITED)**

For the

**Six Months Ended**  
**June 30,**

	2021	2020
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net Loss	\$ (2,400,687)	\$ (626,610)
Adjustments to reconcile net loss to net cash (used in)/provided by operating activities:		
Stock-based compensation expense	1,339,356	784,821
Stock-based litigation settlement expense	—	1,285,102
Depreciation and amortization	233,888	182,164
Deferred income taxes	(1,201,956)	(145,770)
(Gain)/Loss on disposal of fixed assets	(736)	5,522
Changes in operating assets and liabilities:		
(Increase)/Decrease in accounts receivable	(4,446)	268,619
Increase in inventory	(732,978)	(1,278,811)
Decrease/(Increase) in prepaid expenses and other assets	346,227	(156,316)
Increase in accounts payable	380,733	347,350
Increase in accrued payroll and related taxes	103,196	333,272
(Decrease)/Increase in accrued expenses	(838,747)	1,389,588
Increase in accrued tax liability	—	318,618
<b>NET CASH (USED IN)/PROVIDED BY OPERATING ACTIVITIES</b>	<b>(2,776,150)</b>	<b>2,707,549</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Purchases of property and equipment	(152,223)	(363,750)
Proceeds from disposal of property and equipment	9,065	—
Purchases of intangible assets	(23,978)	(149,523)
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(167,136)</b>	<b>(513,273)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Borrowings from indebtedness	—	3,500,000
Proceeds from issuance of equity	1,230,000	26,567,861
Common stock issuance as settlement for litigation	938,094	—
Payments on finance lease liability	(1,616)	(3,717)
<b>NET CASH PROVIDED BY FINANCING ACTIVITIES</b>	<b>2,166,478</b>	<b>30,064,144</b>
<b>NET (DECREASE)/INCREASE IN CASH AND CASH EQUIVALENTS</b>	<b>(776,808)</b>	<b>32,258,420</b>
<b>CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD</b>	<b>27,315,286</b>	<b>5,870,929</b>
<b>CASH AND CASH EQUIVALENTS, END OF PERIOD</b>	<b>\$ 26,538,478</b>	<b>\$ 38,129,349</b>

**Supplemental Information**

Cash paid during the periods for:

Interest	\$ 47	\$ 13,554
Income Taxes	\$ 850	\$ —

**Schedule of Non-Cash Operating, Investing and Financing Activities:**

Issuance of common stock as compensation	\$ 153,446	\$ 120,004
Issuance of common stock as settlement for litigation	\$ 938,094	\$ 938,094

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

**REPRO MED SYSTEMS, INC.**  
**STATEMENTS OF STOCKHOLDERS' EQUITY**  
(Unaudited)

	<u>Common Stock</u>		<u>Additional</u>	<u>Retained</u>	<u>Treasury</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Paid-in</u>	<u>Earnings</u>	<u>Stock</u>	<u>Stockholders'</u>
			<u>Capital</u>			<u>Equity</u>
<b>Three and Six Months Ended</b>						
<b>June 30, 2021</b>						
BALANCE, DECEMBER 31, 2020	46,680,119	\$ 466,801	\$ 35,880,986	\$ 3,652,754	\$ (3,843,562)	\$ 36,156,979
Issuance of stock-based compensation	10,124	101	56,149	—	—	56,250
Compensation expense related to stock options	—	—	677,934	—	—	677,934
Litigation settlement share issuance	95,238	952	937,142	—	—	938,094
Issuance upon options exercised	1,110,580	11,106	1,218,894	—	—	1,230,000
Net income	—	—	—	(1,276,138)	—	(1,276,138)
BALANCE, MARCH 31, 2021	<u>47,896,061</u>	<u>\$ 478,960</u>	<u>\$ 38,771,105</u>	<u>\$ 2,376,616</u>	<u>\$ (3,843,562)</u>	<u>\$ 37,783,119</u>
Issuance of stock-based compensation	14,615	146	97,050	—	—	97,196
Compensation expense related to stock options	—	—	441,841	—	—	441,841
Compensation expense related to restricted stock awards	—	—	66,135	—	—	66,135
Issuance upon options exercised	—	—	—	—	—	—
Net loss	—	—	—	(1,124,549)	—	(1,124,549)
BALANCE, JUNE 30, 2021	<u>47,910,676</u>	<u>\$ 479,106</u>	<u>\$ 39,376,131</u>	<u>\$ 1,252,067</u>	<u>\$ (3,843,562)</u>	<u>\$ 37,263,742</u>

	<u>Common Stock</u>		<u>Additional</u>	<u>Retained</u>	<u>Treasury</u>	<u>Total</u>
	<u>Shares</u>	<u>Amount</u>	<u>Paid-in</u>	<u>Earnings</u>	<u>Stock</u>	<u>Stockholders'</u>
			<u>Capital</u>			<u>Equity</u>
<b>Three and Six Months Ended</b>						
<b>June 30, 2020</b>						
BALANCE, DECEMBER 31, 2019	42,239,788	\$ 422,398	\$ 6,293,069	\$ 4,864,817	\$ (344,204)	\$ 11,236,080
Issuance of stock-based compensation	9,189	92	59,910	—	—	60,002
Compensation expense related to stock options	—	—	300,966	—	—	300,966
Issuance upon options exercised	175,000	1,750	83,750	—	—	85,500
Net income	—	—	—	449,428	—	449,428
BALANCE, MARCH 31, 2020	<u>42,423,977</u>	<u>\$ 424,240</u>	<u>\$ 6,737,695</u>	<u>\$ 5,314,245</u>	<u>\$ (344,204)</u>	<u>\$ 12,131,976</u>
Issuance of stock-based compensation	7,999	80	59,922	—	—	60,002
Compensation expense related to stock options	—	—	363,851	—	—	363,851
Litigation settlement options	—	—	347,008	—	—	347,008
Litigation settlement share issuance	95,238	952	937,142	—	—	938,094
Issuance upon options exercised	519,156	5,192	5,189	—	—	10,381
Capital raise	3,593,750	35,937	26,436,043	—	—	26,471,980
Net loss	—	—	—	(1,076,038)	—	(1,076,038)
BALANCE, JUNE 30, 2020	<u>46,640,120</u>	<u>\$ 466,401</u>	<u>\$ 34,886,850</u>	<u>\$ 4,238,207</u>	<u>\$ (344,204)</u>	<u>\$ 39,247,254</u>

**REPRO MED SYSTEMS, INC.**  
**NOTES TO THE UNAUDITED FINANCIAL STATEMENTS**

**NOTE 1 — NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**NATURE OF OPERATIONS**

REPRO MED SYSTEMS, INC. d/b/a KORU Medical Systems (the “Company,” “KORU Medical,” “we,” “us” or “our”) designs, manufactures and markets proprietary portable and innovative medical devices primarily for the ambulatory infusion market as governed by the United States Food and Drug Administration (the “FDA”) quality and regulatory system and international standards for quality system management. The Company operates as one segment.

**BASIS OF PRESENTATION**

The accompanying financial statements should be read in conjunction with the Company’s annual report on Form 10-K for the year ended December 31, 2020 (“Annual Report”). Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with United States generally accepted accounting principles (“GAAP”) have been condensed or omitted from the accompanying financial statements. The accompanying year-end balance sheet was derived from the audited financial statements included in the Annual Report. The accompanying interim financial statements are unaudited and reflect all adjustments which are in the opinion of management necessary for a fair statement of the Company’s financial position, results of operations, and cash flows for the periods presented. All such adjustments are of a normal, recurring nature. The Company’s results of operations and cash flows for the interim periods are not necessarily indicative of the results of operations and cash flows that it may achieve in future periods.

**CASH AND CASH EQUIVALENTS**

For purposes of the statement of cash flows, the Company considers all short-term investments with an original maturity of three months or less to be cash equivalents. The Company holds cash in excess of \$250,000 at its depository, which exceeds the FDIC insurance limits and is, therefore, uninsured.

**INVENTORY**

Inventories of raw materials are stated at the lower of standard cost, which approximates average cost, or market value including allocable overhead. Work-in-process and finished goods are stated at the lower of standard cost or market value and include direct labor and allocable overhead.

**PATENTS**

Costs incurred in obtaining patents have been capitalized and are being amortized over the legal life of the patents.

**INCOME TAXES**

Deferred income taxes are provided using the liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carry forwards and deferred tax liabilities are recognized for taxable temporary differences.

The Company believes that it has no uncertain tax positions requiring disclosure or adjustment. Generally, tax years starting with 2018 are subject to examination by income tax authorities.

**PROPERTY, EQUIPMENT, AND DEPRECIATION**

Property and equipment is stated at cost and is depreciated using the straight-line method over the estimated useful lives of the respective assets.

**STOCK-BASED COMPENSATION**

The Company maintains a stock option plan under which it grants stock options to certain executives, key employees and consultants. The fair value of each option grant is estimated on the date of the grant using the Black-Scholes option-pricing model. All options are charged against income at their fair value. The entire compensation expense of the award is recognized over the vesting period. Shares of stock granted for director fees are recorded at the fair value of the shares at the grant date.

The Company also maintains an omnibus equity incentive plan. There have been no awards made pursuant to this plan.

The Company issues restricted stock awards. Restricted stock awards are equity classified and measured at the fair market value of the underlying stock at the grant date. The fair value of restricted stock awards vesting at certain market capitalization thresholds were estimated on the date of grant using the Brownian Motion Monte Carlo lattice model. The fair value of restricted stock awards with time-based vesting were estimated on the date of grant at the current stock price. We recognize restricted stock expense using the straight-line attribution method over the requisite service period and account for forfeitures as they occur.

## NET INCOME PER COMMON SHARE

Basic earnings per share are computed on the weighted average of common shares outstanding during each year. Diluted earnings per share include only an increase in the weighted average shares by the common shares issuable upon exercise of employee and consultant stock options. See "NOTE 4 — STOCK-BASED COMPENSATION" for further detail.

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Net loss	\$ (1,124,549)	\$ (1,076,038)	\$ (2,400,687)	\$ (626,610)
Weighted Average Outstanding Shares:				
Outstanding shares	44,489,853	40,361,924	44,226,936	40,018,559
Option shares includable	—(a)	—(a)	—(a)	—(a)
	<u>44,489,853</u>	<u>40,361,924</u>	<u>44,226,936</u>	<u>40,018,559</u>
Net loss per share				
Basic	\$ (0.03)	\$ (0.03)	\$ (0.05)	\$ (0.02)
Diluted	<u>\$ (0.03)</u>	<u>\$ (0.03)</u>	<u>\$ (0.05)</u>	<u>\$ (0.02)</u>

(a) For the three months ended June 30, 2021, and 2020, option shares of 224,336 and 162,831 respectively, were not included as the impact is anti-dilutive. For the six months ended June 30, 2021, and 2020, option shares of 214,132 and 182,575 respectively, were not included as the impact is anti-dilutive. For the three and six months ended June 30, 2021 and 2020, restricted shares of 1,000,000 and zero respectively, were not included as the impact is anti-dilutive.

## USE OF ESTIMATES IN THE FINANCIAL STATEMENTS

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates. Important estimates include but are not limited to asset lives, valuation allowances, inventory valuation, and accruals.

## REVENUE RECOGNITION

The Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, *Revenue from Contracts with Customers*, which provides a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers. We adopted this ASU effective January 1, 2018, on a full retrospective basis.

Adoption of this standard did not result in significant changes to our accounting policies, business processes, systems or controls, or have a material impact on our financial position, results of operations and cash flows or related disclosures. As such, prior period financial statements were not recast.

The Company's revenues result from the sale of assembled products. We recognize revenues when shipment occurs, and at which point the customer obtains control and ownership of the goods. Shipping costs generally are billed to customers and are included in sales.

The Company generally does not accept return of goods shipped unless it is a Company error. The only credits provided to customers are for defective merchandise. The Company warrants the syringe driver from defects in materials and workmanship under normal use and the warranty does not include a performance obligation. The costs under the warranty are expensed as incurred.

- 8 -

Provisions for distributor pricing and annual customer growth rebates are variable consideration and are recorded as a reduction of revenue in the same period the related sales are recorded or when it is probable the annual growth target will be achieved. Rebates are provided to distributors for the difference in selling price to distributor and pricing specified to select customers.

The following table summarizes net sales by geography for the three and six months ended June 30, 2021, and 2020:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
<b>Sales</b>				
Domestic	\$ 4,645,770	\$ 6,745,810	\$ 9,092,559	\$ 12,086,676
International	882,404	963,094	1,866,566	1,952,237
<b>Total</b>	<u>\$ 5,528,174</u>	<u>\$ 7,708,904</u>	<u>\$ 10,959,125</u>	<u>\$ 14,038,913</u>

## LEASES

In February 2016, the FASB issued a standard related to leases to increase transparency and comparability among organizations by requiring the recognition of right-of-use ("ROU") assets and lease liabilities on the balance sheet. Most prominent among the changes in the standard is the recognition of ROU assets and lease liabilities by the Company for



those leases classified as operating leases under current GAAP, while our accounting for capital leases remains substantially unchanged. Under the standard, disclosures are required to meet the objective of enabling users of financial statements to assess the amount, timing, and uncertainty of cash flows arising from leases. The standard became effective for us on January 1, 2019. The standard had a material impact on our balance sheets but did not have a material impact on our statements of operations. See "NOTE 6 — LEASES" for further detail.

#### ACCOUNTING PRONOUNCEMENTS RECENTLY ADOPTED

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The amendments in this ASU simplify the accounting for income taxes by removing several exceptions including the exception to the general methodology for calculating income taxes in an interim period when a year-to-date loss exceeds the anticipated loss for the year. The amendments also improve consistent application of and simplify GAAP for other areas of Topic 740 by clarifying and amending existing guidance. The amendments in this ASU are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020. The Company adopted this standard on January 1, 2021, and it had no impact on our financial statement disclosures.

#### ACCOUNTING PRONOUNCEMENTS NOT YET ADOPTED

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which amends guidance on reporting credit losses for assets held at amortized cost basis and available for sale debt securities. For assets held at amortized cost basis, Topic 326 eliminates the probable initial recognition threshold in current GAAP and, instead, requires an entity to reflect its current estimate of all expected credit losses. The allowance for credit losses is a valuation account that is deducted from the amortized cost basis of the financial assets to present the net amount expected to be collected. For available for sale debt securities, credit losses should be measured in a manner similar to current GAAP, however Topic 326 will require that credit losses be presented as an allowance rather than as a write-down. This ASU affects entities holding financial assets and net investment in leases that are not accounted for at fair value through net income. The amendments affect loans, debt securities, trade receivables, net investments in leases, off balance sheet credit exposures, reinsurance receivables, and any other financial assets not excluded from the scope that have the contractual right to receive cash. The amendments in this update are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. The Company is assessing the impact of the adoption of the ASU on its financial statements, disclosure requirements and methods of adoption.

In March 2020, the FASB issued ASU No. 2020-04, *Reference Rate Reform (Topic 848)*, which provided elective amendments for entities that have contracts, hedging relationships and other transactions that reference LIBOR or another reference rate expected to be discontinued because of reference rate reform. The amendments may be applied to impacted contracts and hedges prospectively through December 31, 2022. The Company is currently evaluating the impact this guidance will have on its financial statements.

The Company considers the applicability and impact of all recently issued accounting pronouncements. Recent accounting pronouncements not specifically identified in our disclosures are either not applicable to the Company or are not expected to have a material effect on our financial condition or results of operations.

- 9 -

---

#### FAIR VALUE MEASUREMENTS

Fair value is the exit price that would be received to sell an asset or paid to transfer a liability. Fair value is a market-based measurement that should be determined using assumptions that market participants would use in pricing an asset or liability. Valuation techniques used to measure fair value should maximize the use of observable inputs and minimize the use of unobservable inputs. To measure fair value, the Company uses the following fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable:

- Level 1 – Quoted prices in active markets for identical assets or liabilities.
- Level 2 – Inputs other than Level 1 that are observable for the asset or liability, either directly or indirectly, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data by correlation or other means.
- Level 3 – Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. Value is determined using pricing models, discounted cash flow methodologies, or similar techniques and includes instruments for which the determination of fair value requires significant judgment or estimation.

The carrying amounts of cash and cash equivalents, accounts receivable, prepaid expenses, accounts payable and accrued expenses are considered to be representative of their fair values because of the short-term nature of those instruments.

There were no transfers between levels in the fair value hierarchy during the six months ended June 30, 2021.

#### IMPAIRMENT OF LONG-LIVED ASSETS

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets may not be fully recoverable. An impairment loss would be recognized when estimated

undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than the carrying amount. The impairment loss, if recognized, would be based on the excess of the carrying value of the impaired asset over its respective fair value. No impairment losses have been recorded through June 30, 2021.

## RECLASSIFICATION

Certain reclassifications have been made to conform prior period data to the current presentation. These reclassifications had no effect on reported net income.

## NOTE 2 — PROPERTY AND EQUIPMENT

Property and equipment consists of the following at:

	<u>June 30, 2021</u>	<u>December 31, 2020</u>
Furniture and office equipment	\$ 787,694	\$ 753,536
Leasehold improvements	556,907	542,796
Manufacturing equipment and tooling	1,922,196	1,856,909
Total property and equipment	3,266,797	3,153,241
Less: accumulated depreciation and amortization	(2,156,247)	(1,985,618)
Property and equipment, net	<u>\$ 1,110,550</u>	<u>\$ 1,167,623</u>

Depreciation expense was \$100,564 and \$79,245 for the three months ended June 30, 2021 and 2020, respectively, and \$200,967 and \$152,013 for the six months ended June 30, 2021 and 2020, respectively.

## NOTE 3 — COMMITMENTS AND CONTINGENCIES

### LEGAL PROCEEDINGS

The Company has been and may again become involved in legal proceedings, claims and litigation arising in the ordinary course of business. KORU Medical is not presently a party to any litigation or other legal proceeding that is believed to be material to its financial condition.

- 10 -

On July 12, 2021, the lead plaintiff filed a notice of voluntary dismissal without prejudice of the claims in the previously disclosed putative class action lawsuit filed in the United States District Court for the Southern District of New York against the Company and its Chief Financial Officer and former Chief Executive Officer, alleging they made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations and prospects, in the Company's earnings communications and Form 10-Q filed during the period August 4, 2020 and January 25, 2021.

### OTHER

On November 11, 2020, the Company entered into a Manufacturing and Supply Agreement with Command Medical Products, Inc. ("Command"), pursuant to which Command has agreed to manufacture and supply the Company's subassemblies, needle sets and tubing products pursuant to the Company's specifications and purchase orders. The first binding purchase order pursuant to the Manufacturing and Supply Agreement was made on November 17, 2020 (the "Effective Date").

The Manufacturing and Supply Agreement provides for a term of five years from the Effective Date. Either party may terminate the Manufacturing and Supply Agreement upon a material breach by the other Party that has not been cured within 90 days, upon the bankruptcy or insolvency of the other Party or as expressly set forth elsewhere in the Agreement. If the Company terminates the Manufacturing and Supply Agreement other than for those reasons within the first three years from the Effective Date, the Company is obligated to pay an early termination fee to Command.

The Manufacturing and Supply Agreement also includes customary provisions relating to, among other things, delivery, inspection procedures, warranties, quality management, business continuity plans, handling and transport, intellectual property, confidentiality and indemnification.

## NOTE 4 — STOCK-BASED COMPENSATION

On June 29, 2016, the Board of Directors amended the Company's 2015 Stock Option Plan (as amended, the "Plan") authorizing the Company to grant awards to certain executives, key employees, and consultants under the Plan, which was approved by shareholders at the Annual Meeting of Shareholders held on September 6, 2016. The total number of shares of Common Stock, with respect to which awards may be granted pursuant to the Plan, may not exceed 6,000,000 pursuant to an amendment to the Plan approved by shareholders at their annual meeting on April 23, 2019.

On February 15, 2021, under the Plan, the Company issued to James M. Beck, its Interim Chief Executive Officer, a non-qualified option to purchase up to 150,000 shares of the Company's common stock at an exercise price of \$ 4.37 per share, of which 100,000 vested on February 15, 2021 and 50,000 vested on March 22, 2021.

On March 15, 2021, under the Plan, the Company issued to Linda Tharby, its incoming President and Chief Executive

Officer, a non-qualified stock option to purchase up to 1,000,000 shares of the Company's common stock at an exercise price of \$3.875 per share, subject to vesting as follows: 25% on March 15, 2022 and 25% each twelve months thereafter.

On April 12, 2021, pursuant to an employment agreement entered into on March 15, 2021, with Linda Tharby, the Company's President and Chief Executive Officer, the Company issued three restricted stock awards for an aggregate 1,000,000 shares of common stock for an aggregate stock price of \$ 3,310,000 and each vesting subject to employment on the respective vesting date.

As of June 30, 2021, the Company had options to purchase 3,072,494 shares of Common Stock outstanding to certain executives, key employees and consultants under the Plan, of which 1,150,000 were issued during the six months ended June 30, 2021.

Prior to January 1, 2021, each non-employee director of the Company was eligible to receive \$ 50,000 annually (effective January 1, 2019), plus \$10,000 for chairing a Board committee (effective February 20, 2019), all to be paid quarterly half in cash and half in common stock. The Chairman of the Board was eligible to receive an additional \$50,000 annually (effective October 1, 2019), all to be paid in common stock.

Effective January 1, 2021, each non-employee director of the Company (other than the Chairman of the Board) and Board advisor are eligible to receive of \$75,000 annually, to be paid quarterly \$12,500 in cash and \$6,250 in common stock. The Chairman of the Board is eligible to receive \$100,000 annually, to be paid quarterly \$12,500 in cash and \$12,500 in common stock. Effective May 18, 2021, each non-employee director of the Company (other than the Chairman of the Board) and Board advisor are eligible to receive of \$110,000 annually, to be paid quarterly \$12,500 in cash and \$15,000 in common stock. The Chairman of the Board is eligible to receive \$ 140,000 annually, to be paid quarterly \$12,500 in cash and \$22,500 in common stock. All payments were and are pro-rated for partial service.

- 11 -

On May 20, 2020, the Company entered into a Settlement Agreement with EMED Technologies Corporation ("EMED") to settle all claims in connection with all pending litigation matters between them. Pursuant to the Settlement Agreement, the Company issued to EMED (i) 95,238 restricted stock units, which vested on May 21, 2020, and 95,238 restricted stock units, which vested on January 1, 2021, and (ii) an option to purchase up to 400,000 shares of the Company's common stock at an exercise price of \$11.21 per share prior to February 1, 2021, which was not exercised.

On February 16, 2021, Donald Pettigrew, the Company's former Chief Executive Officer, exercised options held by him for an aggregate 1,000,000 shares of common stock for an aggregate exercise price of \$ 1,230,000.

On March 18, 2021, our shareholders approved the Company's 2021 Omnibus Equity Incentive Plan (the "2021 Equity Plan"). There have been no awards made pursuant to the 2021 Equity Plan to date.

## 2015 STOCK OPTION PLAN, as amended

### Time Based Stock Options

The per share weighted average fair value of stock options granted during the six months ended June 30, 2021 and June 30, 2020 was \$3.06 and \$6.68, respectively. The fair value of each award is estimated on the grant date using the Black-Scholes option pricing model with the following weighted average assumptions used for grants in the six months ended June 30, 2021 and June 30, 2020. Historical information was the primary basis for the selection of the expected volatility, expected dividend yield and the expected lives of the options. The risk-free interest rate was selected based upon yields of the U.S. Treasury issues with a term equal to the expected life of the option being valued. We have recognized tax benefits associated with stock-based compensation of \$9,817 and \$31,196 for the six months ended June 30, 2021 and 2020, respectively.

	June 30,	
	2021	2020
Dividend yield	0.00%	0.00%
Expected Volatility	74.01%-74.28%	62.1%
Weighted-average volatility	—	—
Expected dividends	—	—
Expected term (in years)	10	10
Risk-free rate	1.20%-1.62%	0.63%

The following table summarizes the status of the Plan with respect to time based stock options:

Six Months Ended June 30,			
2021		2020	
Weighted		Weighted	
Average		Average	
Exercise		Exercise	
Shares	Price	Shares	Price

Outstanding at January 1	2,922,494	\$	2.46	3,647,000	\$	1.32
Granted	1,250,000	\$	3.94	60,000	\$	9.76
Exercised	1,000,000	\$	1.23	722,000	\$	0.58
Forfeited	100,000	\$	3.94	200,000	\$	2.09
Outstanding at June 30	3,072,494	\$	3.41	2,785,000	\$	1.64
Options exercisable at June 30	871,244	\$	2.18	812,760	\$	1.37
Weighted average fair value of options granted during the period	—	\$	3.06	—	\$	6.68
Stock-based compensation expense	—	\$	1,528,522	—	\$	290,991

Total stock-based compensation expense was \$1,528,522 and \$290,991 for the six months ended June 30, 2021, and 2020, respectively. Cash received from option exercises for the six months ended June 30, 2021, and 2020 was \$1,230,000 and \$95,880, respectively.

The weighted-average grant-date fair value of options granted during the six months ended June 30, 2021, and 2020 was \$3.8 million and \$0.4 million, respectively. There were 1.0 million options exercised during the six months ended June 30, 2021, and 722,000 during the six months ended June 30, 2020.

- 12 -

The following table presents information pertaining to options outstanding at June 30, 2021:

Range of Exercise Price	Number Outstanding	Weighted		Number Exercisable	Weighted Exercise Price
		Contractual Life	Average Remaining Contractual Life		
\$0.50-\$9.76	3,072,494	7.7 years		871,244	\$ 2.18

As of June 30, 2021, there was \$5.4 million of total unrecognized compensation cost related to non-vested share-based compensation arrangements granted under the Plan. That cost is expected to be recognized over a weighted-average period of 46 months. The total fair value of shares vested as of June 30, 2021, and June 30, 2020, was \$1,378,220 and \$1,110,068, respectively.

#### Performance Based Stock Options

There were no stock options granted during the six months ended June 30, 2021, and 2020.

The following table summarizes the status of the Plan with respect to performance-based stock options:

	Six Months Ended June 30,			
	2021		2020	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Outstanding at January 1	1,000,000	\$ 1.70	1,000,000	\$ 1.70
Granted	—	\$ —	—	\$ —
Exercised	—	\$ —	—	\$ —
Forfeited	1,000,000	\$ 1.70	—	\$ —
Outstanding at June 30	—	\$ —	1,000,000	\$ 1.70
Options exercisable at June 30	—	\$ —	—	\$ —
Weighted average fair value of options granted during the period	—	\$ —	—	\$ —
Stock-based compensation expense	—	\$ (408,747)	—	\$ 373,826

Total performance stock-based compensation expense totaled (\$408,747) and \$373,826 for the six months ended June 30, 2021, and 2020, respectively. All performance-based stock options were forfeited as of June 30, 2021, and there was no unrecognized compensation cost remaining.

#### Restricted Stock Awards

The following table summarizes the activities for our unvested restricted stock awards for the six months ended June 30,

2021, and 2020.

	Six Months Ended June 30,			
	2021		2020	
	Weighted		Weighted	
	Average		Average	
	Shares	Grant-Date Fair Value	Shares	Grant-Date Fair Value
Unvested at January 1	—	\$ —	—	\$ —
Granted	1,000,000	\$ 3.01	—	\$ —
Vested	—	\$ —	—	\$ —
Forfeited/canceled	—	\$ —	—	\$ —
Unvested at June 30	1,000,000	\$ 3.01	—	\$ —

- 13 -

As of June 30, 2021, there was \$ 2,458,451 of unrecognized compensation cost related to unvested employee restricted shares. This amount is expected to be recognized over a weighted-average period of 21 months. We have recognized tax benefits associated with restricted stock award compensation of \$13,888 and zero for the six months ended June 30, 2021 and 2020, respectively.

#### NOTE 5 — DEBT OBLIGATIONS

On April 14, 2020, the Company issued a promissory note to KeyBank in the aggregate principal amount of \$ 3.5 million (the "Note") as an extension of its line of credit, replacing its then current line of credit agreement. The \$3.5 million Note is in the form of a variable rate non-disclosable revolving line of credit with an interest rate of Prime Rate announced by the Bank minus 0.75%. The Note was renewed on June 24, 2021, in the same form with an interest rate of Prime Rate announced by the Bank minus 1.50%. Interest is due monthly, and all principal and unpaid interest is due on June 1, 2022. The \$3.5 million Note may be prepaid at any time prior to maturity with no prepayment penalties. The \$3.5 million Note contains events of default and other provisions customary for a loan of this type.

In connection with the Note, the Company entered into a Commercial Security Agreement with the Bank dated April 14, 2020 (the "Security Agreement"), pursuant to which the Company granted a security interest in substantially all assets of the Company to secure the obligations of the Company under the Note. The Security Agreement contains terms and conditions typical for the granting of security interests of this kind.

The Company had no amount outstanding against the line of credit as of June 30, 2021.

On April 27, 2020, the Company entered into a Progress Payment Loan and Security Agreement ("PPLSA") and a Master Security Agreement (the "MSA"), each dated as of April 20, 2020, with Key Equipment Finance, a division of the Bank ("KEF"), to provide up to \$2.5 million in financing for equipment purchases from third party vendors. The PPLSA allows the Company to make draws with KEF to make certain payments to the equipment suppliers prior to the commencement of periodic payments under a term loan. Each draw under the PPLSA will bear interest at a variable rate equal to the then-current Prime Rate and will be secured by the financed equipment under the MSA. At the end of each calendar quarter or year, the advances made under the PPLSA will be converted to term loans, subject to KEF's approval of the equipment and certain other closing conditions being met. Once the draws under the PPLSA are converted into a term loan, each promissory note will bear interest at a fixed rate of 4.07% per annum, subject to adjustment based on KEF's cost of funds, with principal and interest payable in 84 equal consecutive monthly installments. Each fixed rate installment promissory note may be prepaid, subject to a penalty if prepaid before the fifth anniversary of its issuance. As of June 30, 2021, the Company had no amount outstanding against the PPLSA.

#### NOTE 6 — LEASES

We have finance and operating leases for our corporate office and certain office and computer equipment. Our leases have remaining lease terms of one year, some of which include options to extend the leases monthly and annually and some with options to terminate the leases within 1 year.

The components of lease expense were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Operating lease cost	\$ 37,369	\$ 37,921	\$ 75,290	\$ 75,843
Short-term lease cost	33,548	8,231	68,437	13,688
Total lease cost	\$ 70,917	\$ 46,152	\$ 143,727	\$ 89,531

Finance lease cost:

Amortization of right-of-use assets	\$ 794	\$ 1,855	\$ 1,589	\$ 3,711
Interest on lease liabilities	19	65	47	152

Total finance lease cost	\$ 813	\$ 1,920	\$ 1,636	\$ 3,863
--------------------------	--------	----------	----------	----------

- 14 -

Supplemental cash flow information related to leases was as follows:

	Six Months Ended June 30,	
	2021	2020
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 70,363	\$ 67,633
Financing cash flows from finance leases	1,616	3,717

Supplemental balance sheet information related to leases was as follows:

	June 30,	December 31,
	2021	2020
<b>Operating Leases</b>		
Operating lease right-of-use assets	\$ 166,483	\$ 236,846
Operating lease current liabilities	142,450	141,293
Operating lease long term liabilities	24,033	95,553
Total operating lease liabilities	\$ 166,483	\$ 236,846

<b>Finance Leases</b>		
Property and equipment, at cost	\$ 12,725	\$ 12,725
Accumulated depreciation	(11,729)	(10,139)
Property and equipment, net	\$ 996	\$ 2,586
Finance lease current liabilities	1,030	2,646
Finance lease long term liabilities	—	—
Total finance lease liabilities	\$ 1,030	\$ 2,646

	June 30,	December 31,
	2021	2020

<b>Weighted Average Remaining Lease Term</b>		
Operating leases	0.9 Years	1.4 Years
Finance leases	0.4 Years	0.7 Years

<b>Weighted Average Discount Rate</b>		
Operating leases	4.75%	4.75%
Finance leases	4.75%	4.75%

Maturities of lease liabilities are as follows:

Year Ending December 31,	Operating Leases	Finance Leases
2021 (excluding the six months ended June 30, 2021)	74,185	1,042
2022	97,257	—
2023	—	—
2024	—	—
2025	—	—
Thereafter	—	—
Total undiscounted lease payments	171,442	1,042
Less: imputed interest	(4,959)	(12)
Total lease liabilities	\$ 166,483	\$ 1,030

- 15 -

## **NOTE 7 — EQUITY**

On June 18, 2020, the Company entered into a Purchase Agreement with Piper Sandler & Co. and Canaccord Genuity LLC, as representatives of the several underwriters named therein (the “Underwriters”), pursuant to which the Company agreed to issue and sell 3,125,000 shares of its common stock. Under the terms of the Purchase Agreement, the Company granted to the Underwriters an option, exercisable for a period of 30 days, to purchase up to an additional 468,750 shares of the Company’s common stock, which the Underwriters exercised in full on June 19, 2020. The Underwriters purchased the shares pursuant to the Purchase Agreement, including the shares subject to the option, at a price of \$7.52 per share. Proceeds to the Company, net of discounts, commissions, fees and expenses, were \$26.6 million.

On November 16, 2020, the Company announced that its Board of Directors had authorized a stock repurchase program under which the Company may purchase up to \$10.0 million of its outstanding common stock through December 31, 2021. As of June 30, 2021, the Company had purchased 683,271 shares for an aggregate \$3,499,358 pursuant to this program.

## **NOTE 8 — SUBSEQUENT EVENTS**

On July 12, 2021, the lead plaintiff filed a notice of voluntary dismissal without prejudice of the claims in the previously disclosed putative class action lawsuit filed in the United States District Court for the Southern District of New York against the Company and its Chief Financial Officer and former Chief Executive Officer, alleging they made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations and prospects, in the Company’s earnings communications and Form 10-Q filed during the period August 4, 2020 and January 25, 2021.

## **PART I — ITEM 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

This Quarterly Report on Form 10-Q contains certain “forward-looking” statements (as such term is defined in the Private Securities Litigation Reform Act of 1995) and information relating to us that are based on the beliefs of the management, as well as assumptions made and information currently available.

Our actual results may vary materially from the forward-looking statements made in this report due to important factors such as uncertainties associated with COVID-19, customer ordering patterns, availability and costs of raw materials and labor and our ability to recover such costs, our ability to convert inventory to a source of cash, future operating results, growth of new patient starts, Food and Drug Administration and foreign authority regulations and the outcome of regulatory audits, introduction of competitive products, acceptance of and demand for new and existing products, ability to penetrate new markets, success in enforcing and obtaining patents, reimbursement related risks, government regulation of the home health care industry, success of our research and development effort, expanding the market of FREEDOM60<sup>®</sup> demand in the SClg market, availability of sufficient capital if or when needed, dependence on key personnel, and the impact of recent accounting pronouncements. When used in this report, the words “estimate,” “project,” “believe,” “may,” “will,” “anticipate,” “intend,” “expect” and similar expressions are intended to identify forward-looking statements. Such statements reflect current views with respect to future events based on currently available information and are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. The Company does not undertake any obligation to release publicly any revision to these forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Throughout this report, the “Company,” “KORU Medical,” “we,” “us” or “our” refers to Repro Med Systems, Inc.

## **OVERVIEW**

The Company designs, manufactures and markets proprietary portable and innovative medical devices primarily for the ambulatory infusion market as governed by the United States Food and Drug Administration (the “FDA”) quality and regulatory system and international standards for quality system management.

KORU Medical continues to monitor its operations and government recommendations as they relate to the COVID-19 pandemic. We cannot predict the effects the pandemic may have on our business, in particular with respect to demand for our products, our strategy, and our prospects, the effects on our customers, or the impact on our financial results. For example, our future net sales growth may continue to be impacted due to fewer new prescriptions for individuals with Primary Immune Deficiency Disease (“PID”) and Chronic Inflammatory Demyelinating Polyneuropathy (“CIDP”) as a result of patients not seeking care during the pandemic. We believe that the pandemic has precipitated limited availability and rising costs of raw materials and labor, which may impact our financial results if current trends continue.

Our revenues derive from three business sources: (i) domestic core, (ii) international core, and (iii) novel therapies. Our core revenues consist of sales of our products for the delivery of SCIg to treat PIDD, CIDP, and other disease states that are FDA cleared for use with the KORU syringe driver. Novel therapies consist of revenues from clinical trials, which consist of sales of syringe drivers, tubing and needles, as well as non-recurring engineering services.

Total net sales were \$5.5 million, or 28% lower for the three months ended June 30, 2021, as compared to the prior year period, where we saw stocking orders of approximately \$1.1 million that we believe were due to the uncertainty of the pandemic, as well as higher novel therapies sales of \$1.2 million from non-recurring clinical trials. Sequential quarter net sales from the three months ended March 31, 2021, grew 2%, driven by domestic core growth of 4%. Both the overall domestic market and our end-user sales to the specialty pharmacy channel grew mid-single digits through the second quarter of 2021, we believe indicating market recovery in new patient starts for SCIg therapy.

Our inventory position increased \$0.7 million from December 31, 2020, as we transition manufacturing to our secondary source.

## RESULTS OF OPERATIONS

### Three months ended June 30, 2021, compared to June 30, 2020

#### Net Sales

The following table summarizes our net sales for the three months ended June 30, 2021, and 2020:

	Three Months Ended June 30,		Change from Prior Year		% of Net Sales	
	2021	2020	\$	%	2021	2020
<b>Net Sales</b>						
Domestic Core	\$ 4,597,797	\$ 5,557,577	\$ (959,780)	(17.3%)	83.2%	72.1%
Novel Therapies	47,973	1,188,233	(1,140,260)	(96.0%)	0.9%	15.4%
Total Domestic	4,645,770	6,745,810	(2,100,040)	(31.1%)	84.1%	87.5%
International Core	859,694	853,043	6,651	0.8%	15.5%	11.1%
Novel Therapies	22,710	110,051	(87,341)	(79.4%)	0.4%	1.4%
Total International	882,404	963,094	(80,690)	(8.4%)	15.9%	12.5%
<b>Total</b>	<b>\$ 5,528,174</b>	<b>\$ 7,708,904</b>	<b>\$ (2,180,730)</b>	<b>(28.3%)</b>		

Total net sales decreased \$2.2 million, or 28.3%, for the three months ended June 30, 2021, as compared with the same period last year, driven primarily by lower novel therapies sales of \$1.2 million compared with last year due to a non-recurring clinical trial last year, and lower domestic core sales to our largest distributor, where we believe pandemic related stocking occurred last year. International core net sales were \$0.9 million, up 1% compared with the same period last year.

#### Gross Profit

Our gross profit for the three months ended June 30, 2021 and 2020 is as follows:

	Three Months Ended June 30,		Change from Prior Year	
	2021	2020	\$	%
Gross Profit	\$ 3,210,184	\$ 4,909,880	\$ (1,699,696)	(34.6%)
Stated as a Percentage of Net Sales	58.1%	63.7%		

Gross profit decreased \$1.7 million or 34.6% in the three months ended June 30, 2021, compared to the same period in 2020. This decrease in the quarter was mostly driven by the decrease in net sales of \$2.2 million as described above.

Gross margin was negatively impacted by lower volumes, resulting in unfavorable absorption in the quarter.



Selling, general and administrative, Litigation and Research and development

Our selling, general and administrative, litigation and research and development costs for the three months ended June 30, 2021 and 2020 are as follows:

	Three Months Ended June 30,		Change from Prior Year	
	2021	2020	\$	%
Selling, general and administrative	\$ 4,085,945	\$ 3,201,831	\$ 884,114	27.6%
Litigation	—	2,346,914	(2,346,914)	(100.0%)
Research and development	386,878	298,196	88,682	29.7%
	<u>\$ 4,472,823</u>	<u>\$ 5,846,941</u>	<u>\$ (1,374,118)</u>	<u>(23.5%)</u>
Stated as a Percentage of Net Sales	80.9%	75.9%		

Selling, general and administrative expenses increased \$0.9 million, or 27.6%, during the three months ended June 30, 2021 compared to the same period last year, mostly due to \$0.5 million in market research, testing and consulting fees all to support commercialization, regulatory and strategic initiatives, \$0.2 million in costs associated with the departure and replacement of the former chief executive officer, as well as higher board of director fees and directors and officers liability insurance of \$0.2 million.

Litigation fees were zero for the three months ended June 30, 2021 compared to the same period last year as a result of the settlement reached with our competitor last year.

Research and development expenses increased \$0.1 million during the three months ended June 30, 2021 compared with the same period last year mostly due to higher consulting fees to support product development for novel therapies.

Depreciation and amortization

Depreciation and amortization expense increased by 24.7 % to \$118,415 in the three months ended June 30, 2021 compared with \$94,940 in the three months ended June 30, 2020. We continue to invest in capital assets, mostly related to manufacturing and computer equipment.

Net Income

	Three Months Ended June 30,		Change from Prior Year	
	2021	2020	\$	%
Net Loss	\$ (1,124,549)	\$ (1,076,038)	\$ (48,511)	(4.5%)
Stated as a Percentage of Net Sales	(20.3%)	(14.0%)		

Our net loss increased \$48,511 in the three months ended June 30, 2021 compared with the same period last year mostly driven by lower gross profit and higher selling, general and administrative expenses, offset by lower litigation costs all as described above.

**Six months ended June 30, 2021 compared to June 30, 2020**Net Sales

The following table summarizes our net sales for the six months ended June 30, 2021 and 2020:

	Six Months Ended June 30,		Change from Prior Year		% of Net Sales	
	2021	2020	\$	%	2021	2020
<b>Net Sales</b>						
Domestic Core	\$ 9,010,214	\$ 10,430,343	\$ (1,420,129)	(13.6%)	82.2%	74.3%
Novel Therapies	82,345	1,656,333	(1,573,988)	(95.0%)	0.8%	11.8%
Total Domestic	9,092,559	12,086,676	(2,994,117)	(24.8%)	83.0%	86.1%
International Core	1,838,600	1,837,910	690	0.0%	16.8%	13.1%
Novel Therapies	27,966	114,327	(86,361)	(75.5%)	0.2%	0.8%
Total International	1,866,566	1,952,237	(85,671)	(4.4%)	17.0%	13.9%
<b>Total</b>	<u>\$ 10,959,125</u>	<u>\$ 14,038,913</u>	<u>\$ (3,079,788)</u>	<u>(21.9%)</u>		

Total net sales decreased \$3.1 million or 21.9% for the six months ended June 30, 2021, as compared to the prior year period, driven primarily by lower novel therapies sales of \$1.7 million compared with last year due to a non-recurring clinical trial last year and lower domestic core net sales driven by what we believe to be pandemic related stocking last year at our largest distributor. International core net sales were \$1.8 million tracking even with the same period last year.

#### Gross Profit

Our gross profit for the six months ended June 30, 2021 and 2020 is as follows:

	Six Months Ended June 30,		Change from Prior Year	
	2021	2020	\$	%
Gross Profit	\$ 6,442,038	\$ 8,698,090	\$ (2,256,052)	(25.9%)
Stated as a Percentage of Net Sales	58.8%	62.0%		

Gross profit decreased \$2.3 million or 25.9% in the six months ended June 30, 2021, compared to the same period last year. Gross margin decreased primarily due to under absorption due to lower volume.

#### Selling, general and administrative, Litigation and Research and development

Our selling, general and administrative expenses, litigation and research and development costs for the six months ended June 30, 2021 and 2020 are as follows:

	Six Months Ended June 30,		Change from Prior Year	
	2021	2020	\$	%
Selling, general and administrative	\$ 9,078,774	\$ 5,964,811	\$ 3,113,963	52.2%
Litigation	—	2,446,072	(2,446,072)	(100.0%)
Research and development	723,719	554,221	169,498	30.6%
	\$ 9,802,493	\$ 8,965,104	\$ 837,389	9.3%
Stated as a Percentage of Net Sales	89.4%	63.9%		

Selling, general and administrative expenses increased \$3.1 million, or 52.2%, during the six months ended June 30, 2021 compared to the same period last year, mostly due to \$1.6 million in costs associated with the departure and replacement of the former chief executive officer and the recruitment of two new Board members, which includes non-cash equity expense of \$0.4 million. Further contributing to the increase was the rollout impact of higher salary and related benefits of \$0.9 million from new hires in the second half of last year to support commercialization, business development and medical affairs for our novel therapies initiatives, as well as infrastructure. Market research, testing and consulting fees to support commercialization and regulatory filings also contributed \$0.6 million, as well as higher director fees and director and officer liability insurance of \$0.4 million. Offsetting these expenses were lower professional fees, the Covid-related heroes bonus paid last year and other miscellaneous expenses in aggregate \$0.4 million. Litigation expense was lower by \$2.4 million as a result of the settlement agreement entered into last year.

Research and development expenses increased \$0.2 million during the six months ended June 30, 2021 compared with the same period last year mostly due to increases to support product development for novel therapies.

#### Depreciation and amortization

Depreciation and amortization expense increased by 28.4% to \$233,888 in the six months ended June 30, 2021 compared with \$182,164 in the six months ended June 30, 2020. We continue to invest in capital assets, mostly related to manufacturing and computer equipment.

#### Net (Loss)/Income

	Six Months Ended June 30,		Change from Prior Year	
	2021	2020	\$	%
Net Loss	\$ (2,400,687)	\$ (626,610)	\$ (1,774,077)	(283.1%)
Stated as a Percentage of Net Sales	(21.9%)	(4.5%)		

Our net loss for the six months ended June 30, 2021 was \$2.4 million compared to net loss of \$0.6 million for the six months ended June 30, 2020, driven by lower gross profit and higher selling, general and administrative expenses, offset by litigation expenses incurred last year, all as described above. Offsetting the loss was a tax benefit of \$0.5 million resulting from book to tax differences related to stock option expense.

## LIQUIDITY AND CAPITAL RESOURCES

Our principal source of liquidity is our cash on hand of \$26.5 million as of June 30, 2021. Our principal source of operating cash inflows is from sales of our products to customers. Our principal cash outflows relate to the purchase and production of inventory and related costs, and selling, general and administrative expenses.

### Cash Flows

The following table summarizes our cash flows:

	<b>Six Months Ended</b>	<b>Six Months Ended</b>
	<b>June 30, 2021</b>	<b>June 30, 2020</b>
Net cash (used in)/provided by operating activities	\$ (2,776,150)	\$ 2,707,549
Net cash used in investing activities	\$ (167,136)	\$ (513,273)
Net cash provided by financing activities	\$ 2,166,478	\$ 30,064,144

### Operating Activities

Net cash used in operating activities of \$2.8 million for the six months ended June 30, 2021 was primarily due to the net loss of \$2.4 million, working capital changes which included an increase in inventory of \$0.7 million related to the transition of manufacturing to our secondary source, and a decrease in accrued expenses of \$0.8 million most of which was non-cash activity related to the issuance of common stock in settlement of litigation, offset by an increase in accounts payable of \$0.4 million and a decrease in prepaids of \$0.3 million related to insurance payments. Further contributing were deferred tax assets of \$1.2 million increased for book to tax differences related to stock option expense. Offsetting these were primarily non-cash charges for stock-based compensation of \$1.3 million, and depreciation and amortization of \$0.2 million.

Net cash provided by operating activities of \$2.7 million for the six months ended June 30, 2020, was mostly attributable to non-cash charges for stock-based compensation and litigation settlement expense of \$2.1 million, an increase in accounts payable, accrued expenses and accrued payroll of \$2.1 million, driven by the litigation settlement with EMED, the capital raise and customer rebates. Further adding to the cash provided by operating activities was an increase in tax liability of \$0.3 million, resulting from book tax differences related to option expense. Collection against accounts receivable also contributed \$0.3 million. Offsetting these were an increase in inventory of \$1.3 million as we built inventory to keep pace with sales growth and to insure timely order fulfillment.

### Investing Activities

Net cash used in investing activities of \$0.2 million for the six months ending June 30, 2021, was for capital expenditures for manufacturing and office equipment.

Net cash used in investing activities of \$0.5 million for the six months ending June 30, 2020, was for capital expenditures for research and development and strategic initiatives as well as for patent and trademark applications.

### Financing Activities

The \$2.2 million provided by financing activities for the six months ended June 30, 2021, is from options exercised and the non-cash activity related to the issuance of common stock in settlement of litigation.

The \$30.1 million provided by financing activities for the six months ended June 30, 2020, is from the \$26.5 million capital raise, net of expenses, a \$3.5 million draw on the line of credit and \$0.1 million from options exercised.

## ACCOUNTING PRONOUNCEMENTS RECENTLY ADOPTED

Refer to "NOTE 1 — NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES" in the accompanying financial statements, which is incorporated herein by reference.

## **ACCOUNTING PRONOUNCEMENTS NOT YET ADOPTED**

Refer to “NOTE 1 — NATURE OF OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES” in the accompanying financial statements, which is incorporated herein by reference.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

Not applicable.

### **ITEM 4. CONTROLS AND PROCEDURES**

The Company’s management, including the Company’s Principal Executive Officer and Principal Financial Officer, has evaluated the effectiveness of the Company’s disclosure controls and procedures as such is defined in Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Based upon their evaluations, the Principal Executive Officer and Principal Financial Officer concluded that, as of the end of the period covered by this report, the Company’s disclosure controls and procedures were effective for the purpose of ensuring that the information required to be disclosed in the reports that the Company files or submits under the Exchange Act with the Securities and Exchange Commission (the “SEC”) (1) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms and (2) is accumulated and communicated to the Company’s management, including its Principal Executive Officer and Principal Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

There have been no changes in the Company’s internal control over financial reporting during the three months ended June 30, 2021, that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

## **PART II – OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

The Company has been and may again become involved in legal proceedings, claims and litigation arising in the ordinary course of business. KORU Medical is not presently a party to any litigation or other legal proceeding that is believed to be material to its financial condition.

On July 12, 2021, the lead plaintiff filed a notice of voluntary dismissal without prejudice of the claims in the previously disclosed putative class action lawsuit filed in the United States District Court for the Southern District of New York against the Company and its Chief Financial Officer and former Chief Executive Officer, alleging they made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations and prospects, in the Company’s earnings communications and Form 10-Q filed during the period August 4, 2020 and January 25, 2021.

### **ITEM 1A. RISK FACTORS**

Our operations and financial results are subject to various risks and uncertainties, including those described in “PART 1, ITEM 1A. RISK FACTORS” in our Annual Report on Form 10-K for the year ended December 31, 2020, which could adversely affect our business, financial condition, results of operations, cash flows, and the trading price of our common stock. There have been no material changes to our risk factors since our Annual Report on Form 10-K for the year ended December 31, 2020.

### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

The Company issued an aggregate 14,615 shares of common stock to its non-employee directors during the three months ended June 30, 2021 in accordance with its non-employee director compensation program.

All of the securities issued by the Company as described in this Item were issued in reliance on the exemption from registration under Section 4(2) under the Securities Act of 1933, as amended.

### **Issuer Purchases of Equity Securities**

On November 16, 2020, the Company announced that its Board of Directors had authorized a stock repurchase program under which the Company may choose to purchase up to \$10.0 million of its outstanding common stock through December 31, 2021. As of December 31, 2020, the Company had purchased 683,271 shares for an aggregate \$3,499,358 pursuant to this program. No purchases have been made since that time, as we continue to evaluate our cash needs in connection with strategic planning under the leadership of our new Chief Executive Officer.

**PART II – ITEM 6. EXHIBITS.**

- 10.1 [Summary of Non-Employee Director Compensation \(effective May 18, 2021\)](#)
- 10.2 [Repro Med Systems, Inc. 2021 Omnibus Equity Incentive Plan](#)
- 10.3 [Form of non-qualified/incentive stock option award agreement pursuant to the 2021 Omnibus Equity Incentive Plan](#)
- 10.4 [Form of Indemnification Agreement between Repro Med Systems, Inc. and each of its directors and executive officers](#)
- 31.1 [Certification of Principal Executive Officer Pursuant to Section 302 of Sarbanes-Oxley Act 2002](#)
- 31.2 [Certification of Principal Financial Officer Pursuant to Section 302 of Sarbanes-Oxley Act 2002](#)
- 32.1 [Certification of Principal Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act 2002](#)
- 32.2 [Certification of Principal Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act 2002](#)
- 101.INS Inline XBRL Instance Document - the XBRL Instance Document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
- 101.SCH Inline XBRL Taxonomy Extension Schema Document
- 101.CAL Inline XBRL Taxonomy Extension Calculation Linkbase Document
- 101.DEF Inline XBRL Taxonomy Definition Linkbase Document
- 101.LAB Inline XBRL Taxonomy Extension Label Linkbase Document
- 101.PRE Inline XBRL Taxonomy Extension Presentation Linkbase Document
- 104 Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

## SIGNATURES

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

REPRO MED SYSTEMS, INC.

August 11, 2021

/s/ Linda Tharby

Linda Tharby, President and Chief Executive Officer

(Principal Executive Officer)

August 11, 2021

/s/ Karen Fisher

Karen Fisher, Chief Financial Officer and Treasurer

(Principal Financial Officer)

**EXHIBIT 10.1**

Repro Med Systems, Inc.  
d/b/a KORU Medical Systems

Summary of Non-Employee Director Compensation

The Board of Directors of Repro Med Systems, Inc. d/b/a KORU Medical Systems (the "Company") has approved the following compensation for its non-employee directors effective with approval of the Company's 2021 Omnibus Equity Incentive Plan by its shareholders on May 18, 2021.

In each case payable quarterly at the end of each fiscal quarter beginning with the quarter ended June 30, 2021 and subject to proration for partial quarter service:

Non-employee Directors (other than Chairman): \$110,000 annually, of which \$50,000 is paid in cash and \$60,000 is paid in shares of the Company's Common Stock.

Chairman of the Board: \$140,000 annually, of which \$50,000 is paid in cash and \$90,000 is paid in shares of the Company's Common Stock.

Chairman of the Audit Committee: additional \$15,000 annually paid in cash.

Chairman of the Compensation Committee: additional \$11,500 annually paid in cash.

Chairman of the Nominating and Corporate Governance Committee: additional \$7,500 annually paid in cash.

Compensation payable in shares of Common Stock is based on the closing price of the Common Stock on the last day of each fiscal quarter as reported by the Nasdaq Capital Market (or such other quotation system or exchange on which the Common Stock is then traded).

---

EXHIBIT 10.2

*FOR APPROVAL BY BOARD*

REPRO MED SYSTEMS, INC.

2021 OMNIBUS EQUITY INCENTIVE PLAN

---



## TABLE OF CONTENTS

Article 1. Effective Date, Objectives and Duration	3
Article 2. Definitions	3
Article 3. Administration	7
Article 4. Shares Subject to the Plan	10
Article 5. Eligibility and General Conditions of Awards	12
Article 6. Stock Options	14
Article 7. Stock Appreciation Rights	16
Article 8. Restricted Shares	17
Article 9. Performance Units and Performance Shares	18
Article 10. Deferred Stock and Restricted Stock Units	18
Article 11. Dividend Equivalents	19
Article 12. Bonus Shares	19
Article 13. Other Stock-Based Awards	19
Article 14. Non-Employee Director Awards	20
Article 15. Amendment, Modification, and Termination	20
Article 16. Section 409A	20
Article 17. Withholding	21
Article 18. Additional Provisions	22

**REPRO MED SYSTEMS, INC.**

**2021 OMNIBUS EQUITY INCENTIVE PLAN**

**Article 1.**

**Effective Date, Objectives and Duration**

1 . 1 Effective Date of the Plan. The Board of Directors of Repro Med Systems, Inc., a New York corporation (the "Company"), adopted the 2021 Omnibus Equity Incentive Plan (the "Plan") effective as of March 22, 2021 (the "Effective Date").

1 . 2 Objectives of the Plan. The Plan is intended (a) to allow selected employees of and consultants to the Company and its Affiliates to acquire or increase equity ownership in the Company, thereby strengthening their commitment to the success of the Company and stimulating their efforts on behalf of the Company, and to assist the Company and its Affiliates in attracting new employees, officers and consultants and retaining existing employees and consultants, (b) to optimize the profitability and growth of the Company and its Affiliates through incentives which are consistent with the Company's goals, (c) to provide Grantees with an incentive for excellence in individual performance, (d) to promote teamwork among employees, consultants and Non-Employee Directors, and (e) to attract and retain highly qualified persons to serve as Non-Employee Directors and to promote ownership by such Non-Employee Directors of a greater proprietary interest in the Company, thereby aligning such Non-Employee Directors' interests more closely with the interests of the Company's stockholders.

1 . 3 Duration of the Plan. The Plan shall commence on the Effective Date and shall remain in effect, subject to the right of the Board to amend or terminate the Plan at any time pursuant to Article 15 hereof, until the earlier of the tenth anniversary of the Effective Date, or the date all Shares subject to the Plan shall have been purchased or acquired and the restrictions on all Restricted Shares granted under the Plan shall have lapsed, according to the Plan's provisions.

**Article 2.**

**Definitions**

Whenever used in the Plan, the following terms shall have the meanings set forth below:

2.1 "Affiliate" means, with respect to a Person, any Person that directly or indirectly Controls, or is Controlled by, or is under common Control with such Person. "Control", "Controlled by" and "under common Control with" shall mean to have a "controlling interest" within the meaning of section 1.409A-1(b) (5) (iii) (E) (1) of the regulations under the Code.

2.2 "Award" means Options (including non-qualified options and Incentive Stock Options), SARs, Restricted Shares, Performance Units (which may be paid in cash), Performance Shares, Deferred Stock, Restricted Stock Units, Dividend Equivalents, Bonus Shares or Other Stock-Based Awards granted under the Plan.

2.3 "Award Agreement" means either (a) a written agreement entered into by the Company and a Grantee setting forth the terms and provisions applicable to an Award granted under this Plan, or (b) a written statement issued by the Company to a Grantee describing the terms and provisions of such Award, including any amendment or modification thereof. The Committee may provide for the use of

electronic, internet or other non-paper Award Agreements and the use of electronic, internet or other non-paper means for the acceptance thereof and actions thereunder by the Grantee.

2.4 “Board” means the Board of Directors of the Company.

2.5 “Bonus Shares” means Shares that are awarded to a Grantee with or without cost and without restrictions either in recognition of past performance, as an inducement to become an Eligible Person or, with the consent of the Grantee, as payment in lieu of any cash remuneration otherwise payable to the Grantee.

2.6 “CEO” means the Chief Executive Officer of the Company.

2.7 “Change in Control” shall mean a change in ownership of the Company or a substantial portion of its assets within the meaning of Treasury Regulation Section 1.409A-3(i)(5) or (vii), or change in effective control of the Company within the meaning of Treasury Regulation Section 1.409A(3)(i)(5)(vi).

2.8 “Code” means the Internal Revenue Code of 1986, as amended from time to time. References to a particular section of the Code include references to regulations and rulings thereunder and to successor provisions.

2.9 “Committee” or “Incentive Plan Committee” has the meaning set forth in Section 3.1(a).

2.10 “Compensation Committee” means the compensation committee of the Board.

2.11 “Common Stock” means the common stock, \$0.01 par value, of the Company.

2.12 “Corporate Transaction” shall have the meaning set forth in Section 4.2(b).

2.13 “Deferred Stock” means a right, granted under Article 10, to receive Shares at the end of a specified deferral period.

2.14 “Disability” or “Disabled” means, unless otherwise defined in an Award Agreement, or as otherwise determined under procedures established by the Committee for purposes of the Plan:

(a) Except as provided in (b) below, a disability within the meaning of Section 22(e) (3) of the Code; and

(b) In the case of any Award that constitutes deferred compensation within the meaning of Section 409A of the Code, a disability as defined in regulations under Code Section 409A. For purpose of Code Section 409A, a Grantee will be considered Disabled if:

(i) the Grantee is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or

(ii) the Grantee is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the Grantee’s employer.

2.15 “Dividend Equivalent” means a right to receive payments equal to dividends or property, if and when paid or distributed, on a specified number of Shares.

2.16 “Effective Date” has the meaning set forth in Section 1.1.

2.17 “Eligible Person” means any individual who is an employee (including any officer) of, a non-employee consultant to, or a Non-Employee Director of, the Company or any Affiliate; provided, however, that solely with respect to the grant of an Incentive Stock Option, an Eligible Person shall be any employee (including any officer) of the Company or any Subsidiary Corporation. Notwithstanding the foregoing, an Eligible Person shall also include an individual who is expected to become an employee to, non-employee consultant of or Non-Employee Director of the Company or any Affiliate within a reasonable period of time after the grant of an Award (other than an Incentive Stock Option); provided that any Award granted to any such individual shall be automatically terminated and cancelled without consideration if the individual does not begin performing services for the Company or any Affiliate within twelve (12) months after the Grant Date. Solely for purposes of Section 5.6(b), current or former employees or non-employee directors of, or consultants to, of an Acquired Entity who receive Substitute Awards in substitution for Acquired Entity Awards shall be considered Eligible Persons under this Plan with respect to such Substitute Awards.

2.18 “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time. References to a particular section of the Exchange Act include references to successor provisions.

2.19 “Exercise Price” means (a) with respect to an Option, the price at which a Share may be purchased by a Grantee pursuant to such Option or (b) with respect to a SAR, the price established at the time a SAR is granted pursuant to Article 7, which is used to determine the amount, if any, of the payment due to a Grantee upon exercise of the SAR.

2.20 “Fair Market Value” of a Share means (i) if the Shares principally trade on a national securities exchange other than the Nasdaq Capital Market, the closing sale price of a Share, and (ii) if the Shares principally trade on the Nasdaq Capital Market or an over-the-counter marketplace, the arithmetic mean of the high and low prices of a Share (and if the mean results in a fractional cent, rounded up to the nearest cent), in each case as reported on the last trading day before the Grant Date, provided that such quotations shall have been made within the ten (10) business days preceding the applicable Grant Date. In the event Shares are not so traded at the time a determination of their value is required to be made hereunder, the determination of their Fair Market Value shall be made by the Committee in such manner as it deems appropriate provided such manner is consistent with Treasury Regulation Section 1.409A-1(b)(5)(iv).

2.21 “Grant Date” means the date on which an Award is granted or such later date as specified in advance by the Committee.

2.22 “Grantee” means a person who has been granted an Award.

2.23 “Incentive Stock Option” means an Option that is intended to meet the requirements of Section 422 of the Code.

2.24 “Including” or “includes” means “including, without limitation,” or “includes, without limitation,” respectively.

2.25 “Management Committee” has the meaning set forth in Section 3.1(b).

2.26 “Non-Employee Director” means a member of the Board who is not an employee of the Company or any Affiliate.

2.27 “Option” means an option granted under Article 6 of the Plan.

2.28 “Other Stock-Based Award” means a right, granted under Article 13 hereof, that relates to or is valued by reference to Shares or other Awards relating to Shares.

2.29 “Performance Period” means, with respect to an Award of Performance Shares or Performance Units, the period of time during which the performance vesting conditions applicable to such Award must be satisfied.

2.30 “Performance Share” and “Performance Unit” have the respective meanings set forth in Article 9.

2.31 “Period of Restriction” means the period during which Restricted Shares are subject to forfeiture if the conditions specified in the Plan and the Award Agreement are not satisfied.

2.32 “Person” means any individual, sole proprietorship, partnership, joint venture, limited liability company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, entity or government instrumentality, division, agency, body or department.

2.33 “Restricted Shares” means Shares, granted under Article 8, that are both subject to forfeiture and are nontransferable if the Grantee does not satisfy the conditions specified in the Plan and the Award Agreement applicable to such Shares.

2.34 “Restricted Stock Units” are rights, granted under Article 10, to receive cash and/or Shares if the Grantee satisfies the conditions specified in the Plan and the Award Agreement applicable to such rights.

2.35 “Rule 16b-3” means Rule 16b-3 promulgated by the SEC under the Exchange Act, as amended from time to time, together with any successor rule.

2.36 “SEC” means the United States Securities and Exchange Commission, or any successor thereto.

2.37 “Section 16 Non-Employee Director” means a member of the Board who satisfies the requirements to qualify as a “non-employee director” under Rule 16b-3.

2.38 “Section 16 Person” means a person who is subject to potential liability under Section 16(b) of the Exchange Act with respect to transactions involving equity securities of the Company.

2.39 “Separation from Service” means, with respect to any Award that constitutes deferred compensation within the meaning of Code Section 409A, a “separation from service” as defined in Treasury Regulation Section 1.409A-1(h). For this purpose, a “separation from service” is deemed to occur on the date that the Company and the Grantee reasonably anticipate that the level of bona fide services the Grantee would perform for the Company and/or any Affiliates after that date (whether as an employee, Non-Employee Director or consultant or independent contractor) would permanently decrease to a level that, based on the facts and circumstances, would constitute a separation from service; provided that a decrease to a level that is 50% or more of the average level of bona fide services provided over the

prior 36 months shall not be a separation from service, and a decrease to a level that is 20% or less of the average level of such bona fide services shall be a separation from service. The Committee retains the right and discretion to specify, and may specify, whether a separation from service occurs with respect to those individuals who are performing services for the Company or an Affiliate immediately prior to an asset purchase transaction in which the Company or an Affiliate is the seller and who continue to perform services for the buyer (or an affiliate thereof) immediately following such asset purchase transaction; provided, such specification is made in accordance with the requirements of Treasury Regulation Section 1.409A-1(h)(4).

2.40 “Share” means a share of Common Stock, and such other securities of the Company, as may be substituted or resubstituted for Shares pursuant to Section 4.2 hereof.

2.41 “Stock Appreciation Right” or “SAR” means an Award granted under Article 7 of the Plan.

2.42 “Subsidiary Corporation” means a corporation other than the Company in an unbroken chain of corporations beginning with the Company if, at the time of granting the Option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

2.43 “Surviving Company” means (a) the surviving corporation in any merger, consolidation or similar transaction, involving the Company (including the Company if the Company is the surviving corporation), (b) or the direct or indirect parent company of such surviving corporation or (c) the direct or indirect parent company of the Company following a sale of substantially all of the outstanding stock of the Company.

2.44 “Term” of any Option or SAR means the period beginning on the Grant Date of an Option or SAR and ending on the date such Option or SAR expires, terminates or is cancelled. No Option or SAR granted under this Plan shall have a Term exceeding 10 years.

2.45 “Termination of Affiliation” occurs on the first day on which an individual is for any reason no longer performing services for the Company or any Affiliate in the capacity of an employee of, a non-employee consultant to, or a Non-Employee Director of, the Company or any Affiliate or with respect to an individual who is an employee of, a non-employee consultant to or a Non-Employee Director of an Affiliate, the first day on which such entity ceases to be an Affiliate of the Company unless such individual continues to perform Services for the Company or another Affiliate without interruption after such entity ceases to be an Affiliate. Notwithstanding the foregoing, if an Award constitutes deferred compensation within the meaning of Code Section 409A, Termination of Affiliation with respect to such Award shall mean the Grantee’s Separation from Service.

### **Article 3. Administration**

#### **3.1 Committee.**

(a) Subject to Article 14, and to Section 3.2, the Plan shall be administered by a Committee (the “Incentive Plan Committee” or the “Committee”) of directors of the Company appointed by the Board from time to time. Notwithstanding the foregoing, the Board may at any time and in one or more instances reserve administrative powers to itself as the Committee or exercise any of the administrative powers of the Committee. The number of members of the Committee may from time to time be increased or decreased as the Board deems appropriate. To

the extent the Board considers it desirable to comply with Rule 16b-3, the Committee shall consist of two or more directors of the Company, all of whom qualify as Section 16 Non-Employee Directors.

(b) The Board or the Incentive Plan Committee may appoint and delegate to another committee ("Management Committee"), or to the CEO, any or all of the authority of the Board or the Committee, as applicable, with respect to Awards to Grantees other than Grantees who are executive officers, Non-Employee Directors, or Section 16 Persons at the time any such delegated authority is exercised, provided that the Board shall fix the terms of the Awards to be granted by the Management Committee for the CEO (including the exercise price of such Awards) and the maximum number of shares subject to Awards that the Management Committee or the CEO may grant; provided further, however, that the Management Committee and the CEO shall not be authorized to grant Awards to himself/herself/themselves, or to any other "executive officer" of the Company (as defined by Rule 3b-7 under the Exchange Act) or to any other "officer" of the Company as defined by Rule 16a-1 under the Exchange Act.

(c) Unless the context requires otherwise, any references herein to "Committee" include references to the Incentive Plan Committee, or the Board to the extent the Incentive Plan Committee, or the Board, as applicable, has assumed or exercises administrative powers itself as the Committee pursuant to subsection (a), and to the Management Committee or the CEO to the extent either has been delegated authority pursuant to subsection (b), as applicable; provided that (i) for purposes of Awards to Non-Employee Directors, "Committee" shall include only the full Board, and (ii) for purposes of Awards intended to comply with Rule 16b-3, the "Committee" shall include only the Incentive Plan Committee.

3 . 2 Powers of Committee. Subject to and consistent with the provisions of the Plan (including Article 14), the Committee has full and final authority and sole discretion as follows; provided that any such authority or discretion exercised with respect to a specific Director shall be approved by the affirmative vote of a majority of the members of the Board, even if not a quorum, but excluding the Director with respect to whom such authority or discretion is exercised:

(a) to determine when, to whom and in what types and amounts Awards should be granted;

(b) to grant Awards to Eligible Persons in any number and to determine the terms and conditions applicable to each Award (including the number of Shares or the amount of cash or other property to which an Award will relate, any Exercise Price or purchase price, any limitation or restriction, any schedule for or performance conditions relating to the earning of the Award or the lapse of limitations, forfeiture restrictions, restrictions on exercisability or transferability, any performance goals including those relating to the Company and/or an Affiliate and/or any division thereof and/or an individual, and/or vesting based on the passage of time, based in each case on such considerations as the Committee shall determine);

(c) to determine the benefit payable under any Award and to determine whether any performance or vesting conditions have been satisfied;

(d) to determine whether specific Awards shall be granted in connection with other specific Awards, and if so, whether they shall be exercisable cumulatively with, or alternatively to, such other specific Awards and all other matters to be determined in connection with an Award;

(e) to determine the Term of any Option or SAR;

(f) to determine the amount, if any, that a Grantee shall pay for Restricted Shares, whether to allow voting rights with respect thereto, or to permit or require the payment of cash dividends thereon, whether such dividends are to be deferred and the terms related thereto, when Restricted Shares (including Restricted Shares acquired upon the exercise of an Option) shall be forfeited and whether such shares shall be held in escrow;

(g) to determine whether, to what extent and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Shares, other Awards or other property (including by "net" exercise), or an Award may be accelerated, vested, canceled, forfeited or surrendered or any terms of the Award may be waived, and to accelerate the exercisability of, and to accelerate or waive any or all of the terms and conditions applicable to, any Award or any group of Awards for any reason and at any time;

(h) to determine with respect to Awards granted to Eligible Persons whether, to what extent and under what circumstances cash, Shares, other Awards, other property and other amounts payable with respect to an Award will be deferred, either at the election of the Grantee or automatically pursuant to the terms of the Award Agreement;

(i) to offer to exchange or buy out any previously granted Award for a payment in cash, Shares or other Award;

(j) to construe and interpret the Plan and to make all determinations, including factual determinations, necessary or advisable for the administration of the Plan;

(k) to make, amend, suspend, waive and rescind rules and regulations relating to the Plan;

(l) to appoint such agents as the Committee may deem necessary or advisable to administer the Plan;

(m) to determine the terms and conditions of all Award Agreements applicable to Eligible Persons (which need not be identical) and, with the consent of the Grantee, to amend any such Award Agreement at any time, among other things, to permit transfers of such Awards to the extent permitted by the Plan; provided that the consent of the Grantee shall not be required for any amendment (i) which does not adversely affect the rights of the Grantee, or (ii) which is necessary or advisable (as determined by the Committee) to carry out the purpose of the Award as a result of any applicable law or (iii) to the extent the Award Agreement specifically permits amendment without consent;

(n) to cancel, with the consent of the Grantee, outstanding Awards and to grant new Awards in substitution therefor;

(o) to impose such additional terms and conditions upon the grant, exercise or retention of Awards as the Committee may, before or concurrently with the grant thereof, deem appropriate, including limiting the percentage of Awards which may from time to time be exercised by a Grantee;

(p) to make adjustments in the terms and conditions of, and the criteria in, Awards in recognition of unusual or nonrecurring events (including events described in Section 4.2)



affecting the Company or an Affiliate or the financial statements of the Company or an Affiliate, or in accordance with applicable laws, regulations or accounting principles;

(q) to correct any defect or supply any omission or reconcile any inconsistency, and to construe and interpret the Plan, rules and regulations under the Plan, and Award Agreements or any other instruments entered into or relating to an Award under the Plan; and

(r) to take any other action with respect to any matters relating to the Plan for which it is responsible and to make all other decisions and determinations as may be required under the terms of the Plan or as the Committee may deem necessary or advisable for the administration of the Plan.

Any action of the Committee with respect to the Plan shall be final, conclusive and binding on all persons, including the Company, its Affiliates, any Grantee, any person claiming any rights under the Plan from or through any Grantee, and stockholders, except to the extent the Committee may subsequently modify, or take further action whether or not consistent with, its prior action. If not specified in the Plan, the time at which the Committee must or may make any determination shall be determined by the Committee, and any such determination may thereafter be modified by the Committee. The express grant of any specific power to the Committee, and the taking of any action by the Committee, shall not be construed as limiting any power or authority of the Committee. Subject to Section 3.1(b), the Committee may delegate to officers of the Company or any Affiliate the authority, subject to such terms as the Committee shall determine, to perform specified functions under the Plan. No Director or member of the Committee, nor any delegate thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and each of the foregoing shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including without limitation reasonable attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors' and officers' liability insurance coverage which may be in effect from time to time.

3.3 No Repricing. Notwithstanding any provision in Section 3.2 to the contrary, the terms of any outstanding Option or SAR may not be amended to reduce the Exercise Price of such Option or SAR or cancel any outstanding Option or SAR in exchange for other Options or SARs with an Exercise Price that is less than the Exercise Price of the cancelled Option or SAR or for any cash payment (or Shares having with a Fair Market Value) in an amount that exceeds the excess of the Fair Market Value of the Shares underlying such cancelled Option or SAR over the aggregate Exercise Price of such Option or SAR or for any other Award, without stockholder approval; provided, however, that the restrictions set forth in this Section 3.3, shall not apply (i) unless the Company has a class of stock that is registered under Section 12 of the Exchange Act or (ii) to any adjustment allowed under to Section 4.2.

#### **Article 4. Shares Subject to the Plan**

4.1 Number of Shares Available for Grants. Subject to adjustment as provided in Section 4.2 and except as provided in Section 5.6(b), the maximum number of Shares hereby reserved for delivery under the Plan shall be one million (1,000,000) Shares. Up to a maximum of one million (\$1,000,000) Shares may be delivered pursuant to the exercise of Incentive Stock Options granted hereunder.

If any Shares subject to an Award granted hereunder (other than a Substitute Award granted pursuant to Section 5.6(b)) are forfeited or such Award otherwise terminates without payment or delivery of such Shares, the Shares subject to such Award, to the extent of any such forfeiture or termination, shall again be available for grant under the Plan. For avoidance of doubt, however, if any Shares subject to an

Award granted hereunder are withheld or applied as payment in connection with the exercise of an Award or the withholding or payment of taxes related thereto ("Returned Shares"), such Returned Shares will be treated as having been delivered for purposes of determining the maximum number of Shares available for grant under the Plan and shall not again be treated as available for grant under the Plan. Moreover, the number of Shares available for issuance under the Plan may not be increased through the Company's purchase of Shares on the open market with the proceeds obtained from the exercise of any Options granted hereunder. Upon settlement of an SAR, the number of Shares underlying the portion of the SAR that is exercised will be treated as having been delivered for purposes of determining the maximum number of Shares available for grant under the Plan and shall not again be treated as available for issuance under the Plan.

Shares delivered pursuant to the Plan may be, in whole or in part, authorized and unissued Shares, or treasury Shares, including Shares repurchased by the Company for purposes of the Plan.

4 . 2 Adjustments in Authorized Shares and Awards: Corporate Transaction, Liquidation or Dissolution.

( a ) Adjustment in Authorized Shares and Awards. In the event that the Committee determines that any dividend or other distribution (whether in the form of cash, Shares, or other property), recapitalization, forward or reverse stock split, subdivision, consolidation or reduction of capital, reorganization, merger, consolidation, scheme of arrangement, split-up, spin-off or combination involving the Company or repurchase or exchange of Shares or other securities of the Company or other rights to purchase Shares or other securities of the Company, or other similar corporate transaction or event affects the Shares such that any adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares (or other securities or property) with respect to which Awards may be granted, (ii) the number and type of Shares (or other securities or property) subject to outstanding Awards, (iii) the Exercise Price with respect to any Option or SAR or, if deemed appropriate, make provision for a cash payment to the holder of an outstanding Award, and (iv) the number and kind of Shares of outstanding Restricted Shares, or the Shares underlying any other form of Award. Notwithstanding the foregoing, no such adjustment shall be authorized with respect to any Options or SARs to the extent that such adjustment would cause the Option or SAR to violate Section 424(a) of the Code or otherwise subject (in the determination of the Committee) any Grantee to taxation under Section 409A of the Code; and *provided further* that the number of Shares subject to any Award denominated in Shares shall always be a whole number.

(b) Merger, Consolidation or Similar Corporate Transaction. In the event of a merger or consolidation of the Company with or into another corporation or a sale of substantially all of the stock of the Company (a "Corporate Transaction"), unless an outstanding Award is assumed by the Surviving Company or replaced with an equivalent Award granted by the Surviving Company in substitution for such outstanding Award, the Committee shall cancel any outstanding Awards that are not vested and nonforfeitable as of the consummation of such Corporate Transaction (unless the Committee accelerates the vesting of any such Awards) and with respect to any vested and nonforfeitable Awards, the Committee may either (i) allow all Grantees to exercise such Awards of Options and SARs within a reasonable period prior to the consummation of the Corporate Transaction and cancel any outstanding Options or SARs that remain unexercised upon consummation of the Corporate Transaction, or (ii) cancel any or all of such outstanding Awards in exchange for a payment (in cash, or in securities or other property) in an amount equal to the amount that the Grantee would have received (net of the Exercise Price

with respect to any Options or SARs) if such vested Awards were settled or distributed or such vested Options and SARs were exercised immediately prior to the consummation of the Corporate Transaction. Notwithstanding the foregoing, if an Option or SAR is not assumed by the Surviving Company or replaced with an equivalent Award issued by the Surviving Company and the Exercise Price with respect to any outstanding Option or SAR exceeds the Fair Market Value of the Shares immediately prior to the consummation of the Corporation Transaction, such Awards shall be cancelled without any payment to the Grantee.

(c) Liquidation or Dissolution of the Company. In the event of the proposed dissolution or liquidation of the Company, each Award will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Committee. Additionally, the Committee may, in the exercise of its sole discretion, cause Awards to be vested and non-forfeitable and cause any conditions on any such Award to lapse, as to all or any part of such Award, including Shares as to which the Award would not otherwise be exercisable or non-forfeitable and allow all Grantees to exercise such Awards of Options and SARs within a reasonable period prior to the consummation of such proposed action. Any Awards that remain unexercised upon consummation of such proposed action shall be cancelled.

(d) Deferred Compensation. Notwithstanding the forgoing provisions of this Section 4.2, if an Award constitutes deferred compensation within the meaning of Code Section 409A, no payment or settlement of such Award shall be made pursuant to Section 4.2(b) or (c), unless the Corporate Transaction or the dissolution or liquidation of the Company, as applicable, constitutes a Change in Control.

## **Article 5.**

### **Eligibility and General Conditions of Awards**

5.1 Eligibility. The Committee may in its discretion grant Awards to any Eligible Person, whether or not he or she has previously received an Award; provided, however, that all Awards made to Non-Employee Directors shall be determined by the Board in its sole discretion.

5.2 Award Agreement. To the extent not set forth in the Plan, the terms and conditions of each Award shall be set forth in an Award Agreement.

5.3 General Terms and Termination of Affiliation. The Committee may impose on any Award or the exercise or settlement thereof, at the date of grant or, subject to the provisions of Section 15.2, thereafter, such additional terms and conditions not inconsistent with the provisions of the Plan as the Committee shall determine, including terms requiring forfeiture, acceleration or pro-rata acceleration of Awards in the event of a Termination of Affiliation by the Grantee. Except as may be required under applicable state law, Awards may be granted for no consideration other than prior and future services. Except as set forth in an Award Agreement or as otherwise determined by the Committee, (a) all Options and SARs that are not vested and exercisable at the time of a Grantee's Termination of Affiliation, and any other Awards that remain subject to a risk of forfeiture or which are not otherwise vested at the time of the Grantee's Termination of Affiliation shall be forfeited to the Company and (b) all outstanding Options and SARs not previously exercised shall expire three months after the Grantee's Termination of Affiliation.

5.4 Nontransferability of Awards.

(a) Each Award and each right under any Award shall be exercisable only by the Grantee during the Grantee's lifetime, or, if permissible under applicable law, by the Grantee's

guardian or legal representative or by a transferee receiving such Award pursuant to a domestic relations order.

(b) No Award (prior to the time, if applicable, Shares are delivered in respect of such Award), and no right under any Award, may be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by a Grantee otherwise than by will or by the laws of descent and distribution (or in the case of Restricted Shares, to the Company) or pursuant to a domestic relations order, and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any Affiliate; provided that the designation of a beneficiary to receive benefits in the event of the Grantee's death shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

(c) Nothing herein shall be construed as requiring the Committee to honor a domestic relations order except to the extent required under applicable law.

5 . 5 Cancellation and Rescission of Awards. Unless the Award Agreement specifies otherwise, the Committee may cancel, rescind, suspend, withhold, or otherwise limit or restrict any unexercised Award at any time if the Grantee is not in compliance with all applicable provisions of the Award Agreement and the Plan or if the Grantee has a Termination of Affiliation.

#### 5.6 Stand-Alone, Tandem and Substitute Awards.

(a) Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution for, any other Award granted under the Plan unless in the determination of the Committee such tandem or substitution Award would subject the Grantee to a tax imposed under Section 409A of the Code. If an Award is granted in substitution for another Award or any non-Plan award or benefit, the Committee shall require the surrender of such other Award or non-Plan award or benefit in consideration for the grant of the new Award. Awards granted in addition to or in tandem with other Awards or non-Plan awards or benefits may be granted either at the same time as or at a different time from the grant of such other Awards or non-Plan awards or benefits; provided, however, that if any SAR is granted in tandem with an Incentive Stock Option, such SAR and Incentive Stock Option must have the same Grant Date, Term and the Exercise Price of the SAR may not be less than the Exercise Price of the Incentive Stock Option.

(b) The Committee may, in its discretion and on such terms and conditions as the Committee considers appropriate in the circumstances, grant Awards under the Plan ("Substitute Awards") in substitution for stock and stock-based awards ("Acquired Entity Awards") held by current or former employees or non-employee directors of, or consultants to, another corporation or entity who become Eligible Persons as the result of a merger or consolidation of the employing corporation or other entity (the "Acquired Entity") with the Company or an Affiliate or the acquisition by the Company or an Affiliate of property or stock of the Acquired Entity immediately prior to such merger, consolidation or acquisition in order to preserve for the Grantee the economic value of all or a portion of such Acquired Entity Award at such price as the Committee determines necessary to achieve preservation of economic value.

5.7 Compliance with Rule 16b-3. The provisions of this Section 5.7 will not apply unless and until the Company has a class of stock that is registered under Section 12 of the Exchange Act.

( a ) Six-Month Holding Period Advice. Unless a Grantee could otherwise dispose of or exercise a derivative security or dispose of Shares delivered under the Plan without incurring liability under Section 16(b) of the Exchange Act, the Committee may advise or require a Grantee to comply with the following in order to avoid incurring liability under Section 16(b) of the Exchange Act: (i) at least six months must elapse from the date of acquisition of a derivative security under the Plan to the date of disposition of the derivative security (other than upon exercise or conversion) or its underlying equity security, and (ii) Shares granted or awarded under the Plan other than upon exercise or conversion of a derivative security must be held for at least six months from the date of grant of an Award.

( b ) Reformation to Comply with Exchange Act Rules. To the extent the Committee determines that a grant or other transaction by a Section 16 Person should comply with applicable provisions of Rule 16b-3 (except for transactions exempted under alternative Exchange Act rules), the Committee shall take such actions as necessary to make such grant or other transaction so comply, and if any provision of this Plan or any Award Agreement relating to a given Award does not comply with the requirements of Rule 16b-3 as then applicable to any such grant or transaction, such provision will be construed or deemed amended, if the Committee so determines, to the extent necessary to conform to the then applicable requirements of Rule 16b-3.

(c) Rule 16b-3 Administration. Any function relating to a Section 16 Person shall be performed solely by the Committee or the Board if necessary to ensure compliance with applicable requirements of Rule 16b-3, to the extent the Committee determines that such compliance is desired. Each member of the Committee or person acting on behalf of the Committee shall be entitled to, in good faith, rely or act upon any report or other information furnished to him by any officer, manager or other employee of the Company or any Affiliate, the Company's independent certified public accountants or any executive compensation consultant or attorney or other professional retained by the Company to assist in the administration of the Plan.

5.8 Deferral of Award Payouts. The Committee may permit a Grantee to defer, or if and to the extent specified in an Award Agreement require the Grantee to defer, receipt of the payment of cash or the delivery of Shares that would otherwise be due by virtue of the lapse or waiver of restrictions with respect to Restricted Stock Units, the satisfaction of any requirements or goals with respect to Performance Units or Performance Shares, the lapse or waiver of the deferral period for Deferred Stock, or the lapse or waiver of restrictions with respect to Other Stock-Based Awards or Cash Incentive Awards. If the Committee permits or requires such deferrals, the Committee shall establish rules and procedures for making such deferral elections and for the payment of such deferrals, which shall conform in the Committee's determination in form and substance with applicable regulations promulgated under Section 409A of the Code so that if the Committee is correct in such determination the Grantee is not subjected to taxes under Section 409A of the Code with respect to such deferrals. Except as otherwise provided in an Award Agreement, any payment or any Shares that are subject to such deferral shall be made or delivered to the Grantee as specified in the Award Agreement or pursuant to the Grantee's deferral election.

## **Article 6. Stock Options**

6.1 Grant of Options. Subject to and consistent with the provisions of the Plan, Options may be granted to any Eligible Person in such number, and upon such terms, and at any time and from time to time as shall be determined by the Committee.

6 . 2 Award Agreement. Each Option grant shall be evidenced by an Award Agreement that shall specify the Exercise Price, the Term of the Option, the number of Shares to which the Option pertains, the time or times at which such Option shall be exercisable and such other provisions as the Committee shall determine.

6.3 Option Exercise Price. The Exercise Price of an Option under this Plan shall be determined in the sole discretion of the Committee but may not be less than 100% of the Fair Market Value of a Share on the Grant Date.

6.4 Grant of Incentive Stock Options. At the time of the grant of any Option, the Committee may in its discretion designate that such Option shall be made subject to additional restrictions to permit it to qualify as an Incentive Stock Option. Any Option designated as an Incentive Stock Option:

(a) shall be granted only to an employee of the Company or a Subsidiary Corporation;

(b) shall have an Exercise Price of not less than 100% of the Fair Market Value of a Share on the Grant Date, and, if granted to a person who owns capital stock (including stock treated as owned under Section 424(d) of the Code) possessing more than 10% of the total combined voting power of all classes of capital stock of the Company or any Subsidiary Corporation (a "More Than 10% Owner"), have an Exercise Price not less than 110% of the Fair Market Value of a Share on its Grant Date;

(c) shall be for a period of not more than 10 years (five years if the Grantee is a More Than 10% Owner) from its Grant Date, and shall be subject to earlier termination as provided herein or in the applicable Award Agreement;

(d) shall not have an aggregate Fair Market Value (as of the Grant Date) of the Shares with respect to which Incentive Stock Options (whether granted under the Plan or any other plan of the Company or Affiliate ("Other Plans")) are exercisable for the first time by such Grantee during any calendar year ("Current Grant"), determined in accordance with the provisions of Section 422 of the Code, which exceeds \$100,000 (the "\$100,000 Limit");

(e) shall, if the aggregate Fair Market Value of the Shares (determined on the Grant Date) with respect to the Current Grant and all Incentive Stock Options previously granted under the Plan and any Other Plans which are exercisable for the first time during a calendar year ("Prior Grants") would exceed the \$100,000 Limit, be, as to the portion in excess of the \$100,000 Limit, exercisable as a separate option that is not an Incentive Stock Option at such date or dates as are provided in the Current Grant;

(f) shall require the Grantee to notify the Committee of any disposition of any Shares delivered pursuant to the exercise of the Incentive Stock Option under the circumstances described in Section 421(b) of the Code (relating to holding periods and certain disqualifying dispositions) ("Disqualifying Disposition") within 10 days of such a Disqualifying Disposition;

(g) shall by its terms not be assignable or transferable other than by will or the laws of descent and distribution and may be exercised, during the Grantee's lifetime, only by the Grantee; provided, however, that the Grantee may, to the extent provided in the Plan in any manner specified by the Committee, designate in writing a beneficiary to exercise his or her Incentive Stock Option after the Grantee's death; and

(h) shall, if such Option nevertheless fails to meet the foregoing requirements, or otherwise fails to meet the requirements of Section 422 of the Code for an Incentive Stock Option, be treated for all purposes of this Plan, except as otherwise provided in subsections (d) and (e) above, as an Option that is not an Incentive Stock Option.

6 . 5 Payment of Exercise Price. Except as otherwise provided in an Award Agreement, Options shall be exercised by the delivery of a written notice of exercise to the Company, setting forth the number of Shares with respect to which the Option is to be exercised, accompanied by full payment for the Shares made by any one or more of the following means:

(a) cash, personal check or wire transfer;

(b) with the approval of the Committee, delivery of Common Stock owned by the Grantee prior to exercise, valued at Fair Market Value on the date of exercise;

(c) with the approval of the Committee, Shares acquired upon the exercise of such Option, such Shares valued at Fair Market Value on the date of exercise; or

(d) with the approval of the Committee, subject to applicable law (including the prohibited loan provisions of Section 402 of the Sarbanes Oxley Act of 2002), through the sale of the Shares acquired on exercise of the Option through a broker-dealer to whom the Grantee has submitted an irrevocable notice of exercise and irrevocable instructions to deliver promptly to the Company the amount of sale proceeds sufficient to pay for such Shares, together with, if requested by the Company, the amount of federal, state, local or foreign withholding taxes payable by Grantee by reason of such exercise.

## **Article 7. Stock Appreciation Rights**

7 . 1 Issuance. Subject to and consistent with the provisions of the Plan, the Committee, at any time and from time to time, may grant SARs to any Eligible Person either alone or in addition to other Awards granted under the Plan. Such SARs may, but need not, be granted in connection with a specific Option granted under Article 6. The Committee may impose such conditions or restrictions on any SAR as it shall deem appropriate.

7 . 2 Award Agreements. Each SAR grant shall be evidenced by an Award Agreement in such form as the Committee may approve and shall contain such terms and conditions not inconsistent with other provisions of the Plan as shall be determined from time to time by the Committee.

7.3 SAR Exercise Price. The Exercise Price of a SAR shall be determined by the Committee in its sole discretion; provided that the Exercise Price shall not be less than 100% of the Fair Market Value of a Share on the date of the grant of the SAR.

7 . 4 Exercise and Payment. Upon the exercise of a SAR, a Grantee shall be entitled to receive payment from the Company in an amount determined by multiplying:

(a) The excess of the Fair Market Value of a Share on the date of exercise over the Exercise Price; by

(b) The number of Shares with respect to which the SAR is exercised.

SARs shall be deemed exercised on the date written notice of exercise in a form acceptable to the Committee is received by the Secretary of the Company. The Company shall make payment in respect of any SAR within five (5) days of the date the SAR is exercised. Any payment by the Company in respect of a SAR may be made in cash, Shares, other property, or any combination thereof, as the Committee, in its sole discretion, shall determine or, to the extent permitted under the terms of the applicable Award Agreement, at the election of the Grantee.

## **Article 8. Restricted Shares**

8.1 Grant of Restricted Shares Subject to and consistent with the provisions of the Plan, the Committee, at any time and from time to time, may grant Restricted Shares to any Eligible Person in such amounts as the Committee shall determine.

8.2 Award Agreement. Each grant of Restricted Shares shall be evidenced by an Award Agreement that shall specify the Period(s) of Restriction, the number of Restricted Shares granted, and such other provisions as the Committee shall determine. The Committee may impose such conditions and/or restrictions on any Restricted Shares granted pursuant to the Plan as it may deem advisable, including restrictions based upon the achievement of specific performance goals, time-based restrictions on vesting with or without the attainment of the performance goals, and/or restrictions under applicable securities laws; provided that such conditions and/or restrictions may lapse, if so determined by the Committee, in the event of the Grantee's Termination of Affiliation due to death, Disability, or involuntary termination by the Company or an Affiliate without "Cause". For purposes of the Plan, "Cause" means (i) conviction of, or the entry of a plea of guilty or no contest to, a felony or any other crime that causes the Company or its Affiliates public disgrace or disrepute, or materially and adversely affects the Company's or its Affiliates' operations or financial performance or the relationship the Company has with its customers, (ii) gross negligence or willful misconduct with respect to the Company or any of its Affiliates, including, without limitation fraud, embezzlement, theft or dishonesty in the course of his or her employment; (iii) alcohol abuse or use of controlled drugs other than in accordance with a physician's prescription; (iv) refusal to perform any lawful, material obligation of fulfill any duty (including any duty or obligation of the type described in clause (vi) below) to the Company or its Affiliates; (v) material breach of any agreement with or duty owed to the Company or any of its Affiliates; (vi) any breach of any obligation or duty to the Company or any of its Affiliates (whether arising by statute, common law or agreement) relating to confidentiality, noncompetition, nonsolicitation or proprietary rights; or (vii) the occurrence of a "Forfeiture Event" as defined in section 18.5, below. Notwithstanding the foregoing, if an Eligible Person and the Company (or any of its Affiliates) have entered into an employment agreement, consulting agreement or other similar agreement that specifically defines "cause", then with respect to that Eligible Person "Cause" shall have the meaning as defined in such employment, consulting or other agreement.

8.3 Consideration for Restricted Shares The Committee shall determine the amount, if any, that a Grantee shall pay for Restricted Shares.

8.4 Effect of Forfeiture. If Restricted Shares are forfeited, and if the Grantee was required to pay for such shares or acquired such Restricted Shares upon the exercise of an Option, the Grantee shall be deemed to have resold such Restricted Shares to the Company at a price equal to the lesser of (x) the amount paid by the Grantee for such Restricted Shares, or (y) the Fair Market Value of a Share on the date of such forfeiture. The Company shall pay to the Grantee the deemed sale price as soon as is administratively practical. Such Restricted Shares shall cease to be outstanding and shall no longer confer on the Grantee thereof any rights as a stockholder of the Company, from and after the date of the event



causing the forfeiture, whether or not the Grantee accepts the Company's tender of payment for such Restricted Shares.

8 . 5 Escrow; Legends. The Committee may provide that the certificates for any Restricted Shares (x) shall be held (together with a stock power executed in blank by the Grantee) in escrow by the Secretary of the Company until any applicable conditions or restrictions respecting such Restricted Shares are satisfied or such Restricted Shares are forfeited and/or (y) shall bear an appropriate legend restricting the transfer of such Restricted Shares under the Plan. If any applicable conditions or restrictions respecting such Restricted Shares shall lapse, the Company shall cause certificates for such shares to be delivered without such legend.

## **Article 9.**

### **Performance Units and Performance Shares**

9 . 1 Grant of Performance Units and Performance Shares. Subject to and consistent with the provisions of the Plan, Performance Units or Performance Shares may be granted to any Eligible Person in such amounts and upon such terms, and at any time and from time to time, as shall be determined by the Committee.

9.2 Value/Performance Goals. The Committee shall set performance goals in its discretion which, depending on the extent to which they are met, will determine the number or value of Performance Units or Performance Shares that will be paid to the Grantee.

( a ) Performance Unit. Each Performance Unit shall have an initial value that is established by the Committee at the time of grant.

( b ) Performance Share. Each Performance Share shall have an initial value equal to the Fair Market Value of a Share on the date of grant.

9.3 Earning of Performance Units and Performance Shares. After the applicable Performance Period has ended, the holder of Performance Units or Performance Shares shall be entitled to payment at the time specified in the Award Agreement based on the level of achievement of performance goals set by the Committee.

At the discretion of the Committee, the settlement of Performance Units or Performance Shares may be in cash, Shares of equivalent value, or in some combination thereof, as set forth in the Award Agreement.

If a Grantee is transferred to a different business unit of the Company during a Performance Period, then, to the extent the Committee determines that the Award, the performance goals, or the Performance Period are no longer appropriate, the Committee may adjust, change, eliminate or cancel the Award, the performance goals, or the applicable Performance Period, as it deems appropriate in order to make them appropriate and comparable to the initial Award, the performance goals, or the Performance Period.

At the discretion of the Committee, a Grantee may be entitled to receive any dividends or Dividend Equivalents declared with respect to Shares deliverable in connection with vested Performance Shares which have been earned, but not yet delivered to the Grantee.

**Article 10.**  
**Deferred Stock and Restricted Stock Units**

10.1 Grant of Deferred Stock and Restricted Stock Units Subject to and consistent with the provisions of the Plan, the Committee, at any time and from time to time, may grant Deferred Stock and/or Restricted Stock Units to any Eligible Person, in such amount and upon such terms as the Committee shall determine. The Committee may conform such grant(s) in accordance with applicable regulations promulgated under Section 409A of the Code.

10.2 Vesting and Delivery.

( a ) Delivery with Respect to Deferred Stock and Restricted Stock Units Delivery of Shares subject to a Deferred Stock or a Restricted Stock Unit grant will occur upon expiration of the deferral period or upon the occurrence of one or more of the distribution events described in Section 409A (a) (2) of the Code as specified by the Committee in the Grantee's Award Agreement. Such Award may be subject to such substantial risk of forfeiture conditions as the Committee may impose, which conditions may lapse at such times or upon the achievement of such objectives as the Committee shall determine. Unless otherwise determined by the Committee, to the extent that the Grantee has a Termination of Affiliation while the Deferred Stock remains subject to a substantial risk of forfeiture, such Deferred Shares shall be forfeited, unless the Committee determines that such substantial risk of forfeiture shall lapse in the event of the Grantee's Termination of Affiliation due to death, Disability, or involuntary termination by the Company or an Affiliate without "Cause."

10.3 Voting and Dividend Equivalent Rights Attributable to Deferred Stock and Restricted Stock Units. A Grantee awarded Deferred Stock or Restricted Stock Units will have no voting rights with respect to such Deferred Stock or Restricted Stock Units prior to the delivery of Shares in settlement of such Deferred Stock and/or Restricted Stock Units. Unless otherwise determined by the Committee, a Grantee will have no rights to receive Dividend Equivalents in respect of Deferred Stock and/or Restricted Stock Units. Dividend Equivalents, if any, shall be deemed reinvested in additional Shares of Deferred Stock or Restricted Stock Units, as applicable, which shall remain subject to the same forfeiture conditions applicable to the Deferred Stock or Restricted Stock Units to which such Dividend Equivalents relate.

**Article 11.**  
**Dividend Equivalents**

The Committee is authorized to grant Awards of Dividend Equivalents alone or in conjunction with other Awards. The Committee may specify the time or times that Dividend Equivalents shall be paid or distributed and the extent to which they shall be deemed to have been reinvested in additional Shares or additional Awards or otherwise reinvested subject to distribution at the same time and subject to the same conditions as the Award to which they relate; provided, however, that any Dividend Equivalents granted in conjunction with any Award that is subject to forfeiture conditions shall remain subject to the same forfeiture conditions applicable to the Award to which such Dividend Equivalents relate. The Committee may determine whether the timing of payment or distribution of Dividend Equivalents should comply with the requirements of Section 409A of the Code.

**Article 12.**  
**Bonus Shares**

Subject to the terms of the Plan, the Committee may grant Bonus Shares to any Eligible Person, in such amount and upon such terms and at any time and from time to time as shall be determined by the Committee.

**Article 13.**  
**Other Stock-Based Awards**

The Committee is authorized, subject to limitations under applicable law, to grant such other Awards that are denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Shares, as deemed by the Committee to be consistent with the purposes of the Plan, including Shares awarded which are not subject to any restrictions or conditions, convertible or exchangeable debt securities or other rights convertible or exchangeable into Shares, and Awards valued by reference to the value of securities of or the performance of specified Affiliates. Subject to and consistent with the provisions of the Plan, the Committee shall determine the terms and conditions of such Awards. Except as provided by the Committee, Shares delivered pursuant to a purchase right granted under this Article 13 shall be purchased for such consideration, paid for by such methods and in such forms, including cash, Shares, outstanding Awards or other property, as the Committee shall determine.

**Article 14.**  
**Non-Employee Director Awards**

Subject to the terms of the Plan, the Board may grant Awards to any Non-Employee Director, in such amount and upon such terms and at any time and from time to time as shall be determined by the Board in its sole discretion. Except as otherwise provided in Section 5.6(b), Non-Employee Directors may not be granted Awards with respect to Shares that have a Fair Market Value (determined as of the date of grant) in excess of \$750,000 in a single calendar year.

**Article 15.**  
**Amendment, Modification, and Termination**

15.1 Amendment, Modification, and Termination. Subject to Section 15.2, the Board may, at any time and from time to time, alter, amend, suspend, discontinue or terminate the Plan in whole or in part without the approval of the Company's stockholders, except that (a) any amendment or alteration shall be subject to the approval of the Company's stockholders if such stockholder approval is required by any federal or state law or regulation or the rules of any stock exchange or automated quotation system on which the Shares may then be listed or quoted, and (b) the Board may otherwise, in its discretion, determine to submit other such amendments or alterations to stockholders for approval.

15.2 Awards Previously Granted. Except as otherwise specifically permitted in the Plan or an Award Agreement, no termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted under the Plan, without the written consent of the Grantee of such Award.

**Article 16.**  
**Section 409A**

16.1 Awards Subject to Code Section 409A. Notwithstanding any provision of the Plan or an Award to the contrary, if any Award or benefit provided under this Plan is subject to the provisions of Section 409A of the Code ("Section 409A"), such provision or Award shall (if the Committee so determines) be administered, interpreted and construed in a manner necessary to comply with Section 409A or an exception thereto (or disregarded to the extent such provision cannot be so administered, interpreted or construed). In such case, the following provisions shall apply, as applicable:

(a) For purposes of Section 409A, and to the extent the Committee determines applicable to any Award or benefit under the Plan, it is intended that distribution events qualify as permissible distribution events for purposes of Section 409A and shall be interpreted and construed accordingly. With respect to payments subject to Section 409A, the Company reserves the right to accelerate and/or defer any payment whether or not permitted and consistent with Section 409A. Whether a Grantee has separated from service or employment will be determined based on all of the facts and circumstances and, to the extent the Committee determines applicable to any Award or benefit, in accordance with the guidance issued under Section 409A.

(b) To the extent the Committee determines applicable, the grant of Non-Qualified Stock Options and other stock rights shall be granted under terms and conditions consistent with Treas. Reg. § 1.409A-1(b)(5) such that any such Award does not constitute a deferral of compensation under Section 409A.

(c) In no event shall any member of the Board, the Committee or the Company (or its employees, officers or directors) have any liability to any Grantee (or any other Person) due to the failure of an Award to satisfy the requirements of Section 409A.

(d) Notwithstanding anything herein or in any Award Agreement to the contrary, to the extent that distribution of a 409A Award is triggered by a Grantee's Separation from Service, if the Grantee is then a "specified employee" (as defined in Treasury Regulation Section 1.409A-1(i)), no distribution may be made before the date which is six (6) months after such Grantee's Separation from Service, or, if earlier, the date of the Grantee's death.

**Article 17.**  
**Withholding**

17.1 Required Withholding.

(a) The Committee in its sole discretion may provide that when taxes are to be withheld in connection with any Award (the "Tax Date"). The Grantee may elect to make payment for the withholding of federal, state and local taxes, including Social Security and Medicare ("FICA") taxes by one or a combination of the following methods:

(i) payment of an amount in cash equal to the amount to be withheld;

(ii) delivering part or all of the amount to be withheld in the form of Common Stock valued at its Fair Market Value on the Tax Date;

(iii) requesting the Company to withhold from those Shares that would otherwise be received pursuant to an Award, a number of Shares having a Fair Market Value on the Tax Date equal to the amount to be withheld; or

(iv) withholding from any compensation otherwise due to the Grantee.

The Committee in its sole discretion may provide that the maximum amount of such tax withholding shall not exceed the minimum amount of taxes, including FICA taxes, required to be withheld under federal, state and local law. An election by Grantee under this subsection is irrevocable. Any fractional share amount and any additional withholding not paid by the withholding or surrender of Shares must be paid in cash. If no timely election is made, the Grantee must deliver cash to satisfy all tax withholding requirements.

(b) Any Grantee who makes a Disqualifying Disposition (as defined in Section 6.4(f)) or an election under Section 83(b) of the Code shall remit to the Company an amount sufficient to satisfy all resulting tax withholding requirements in the same manner as set forth in subsection (a).

17.2 Notification under Code Section 83(b). If the Grantee, in connection with the grant of any publically traded Option, or the grant of Restricted Shares, makes the election permitted under Section 83(b) of the Code to include in such Grantee's gross income in the year of transfer the amounts specified in Section 83(b) of the Code, then such Grantee shall notify the Company of such election within 10 days of filing the notice of the election with the Internal Revenue Service, in addition to any filing and notification required pursuant to regulations issued under Section 83(b) of the Code. The Committee may, in connection with the grant of an Award or at any time thereafter, prohibit a Grantee from making the election described in this section 17.2.

## **Article 18. Additional Provisions**

18.1 Successors. Subject to Section 4.2(b), all obligations of the Company under the Plan with respect to Awards granted hereunder shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise of all or substantially all of the business and/or assets of the Company.

18.2 Severability. If any part of the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any other part of the Plan. Any Section or part of a Section so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

18.3 Requirements of Law. The granting of Awards and the delivery of Shares under the Plan shall be subject to all applicable laws, rules, and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required by the same. Notwithstanding any provision of the Plan or any Award, Grantees shall not be entitled to exercise, or receive benefits under, any Award, and the Company (and any Affiliate) shall not be obligated to deliver any Shares or deliver benefits to a Grantee, if such exercise or delivery would constitute a violation by the Grantee or the Company of any applicable law or regulation.

#### 18.4 Securities Law Compliance.

(a) If the Committee deems it necessary to comply with any applicable securities law, or the requirements of any stock exchange upon which Shares may be listed, the Committee may impose any restriction on Awards or Shares acquired pursuant to Awards under the Plan as it may deem advisable. In addition, if requested by the Company or any underwriter engaged by the Company, Shares acquired pursuant to Awards may not be sold or otherwise transferred or disposed of for such period following the effective date of any registration statement of the Company filed under the Securities Act as the Company or such underwriter shall specify reasonably and in good faith. All certificates for Shares delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the rules, regulations and other requirements of the SEC, any stock exchange upon which Shares are then listed, any applicable securities or other law, and the Committee may cause a legend or legends to be put on any such certificates to make appropriate reference to such restrictions. If so requested by the Company, the Grantee shall make a written representation to the Company that he or she will not sell or offer to sell any Shares unless a registration statement shall be in effect with respect to such Shares under the Securities Act of 1933, as amended, and any applicable state securities law.

(b) If the Committee determines that the exercise or nonforfeiture of, or delivery of benefits pursuant to, any Award would violate any applicable provision of securities or other laws or the listing requirements of any national securities exchange or national market system on which are listed any of the Company's equity securities, then the Committee may postpone any such exercise, nonforfeiture or delivery, as applicable, but the Company shall use all reasonable efforts to cause such exercise, nonforfeiture or delivery to comply with all such provisions at the earliest practicable date.

18.5 Forfeiture Events. Notwithstanding any provisions herein to the contrary, the Committee shall have the discretionary authority at any time to determine that a Grantee's (including his or her estate's, beneficiary's or transferee's) rights, payments and benefits with respect to any Award shall be subject to reduction, cancellation, forfeiture or recoupment in the event of the Grantee's serious misconduct; violation of the Company's or an Affiliate's policies; breach of fiduciary duty; unauthorized disclosure of any trade secret or confidential information of the Company or an Affiliate; breach of applicable noncompetition, nonsolicitation, confidentiality or other restrictive covenants; or other conduct or activity that is in competition with the business of the Company or an Affiliate, or otherwise detrimental to the business, reputation or interests of the Company and/or an Affiliate; or upon the Grantee's termination for Cause or the occurrence of certain events specified in the applicable Award Agreement (in any such case, whether or not the Grantee is then an Eligible Person). The determination of whether a Grantee's conduct, activities or circumstances are described in the immediately preceding sentence shall be made by the Committee in its discretion, and pending any such determination, the Committee shall have the authority to suspend the exercise, payment, delivery or settlement of all or any portion of such Grantee's outstanding Awards pending any investigation of the matter.

18.6 No Rights as a Stockholder. No Grantee shall have any rights as a stockholder of the Company with respect to the Shares which may be deliverable upon exercise or payment of such Award until such Shares have been delivered to him or her, except that Restricted Shares, whether held by a Grantee or in escrow by the Secretary of the Company, shall confer on the Grantee all rights of a stockholder of the Company, except as otherwise provided in the Plan or Award Agreement.

18.7 Nature of Payments. Unless otherwise specified in the Award Agreement, Awards shall be special incentive payments to the Grantee and shall not be taken into account in computing the amount of salary or compensation of the Grantee for purposes of determining any benefit under (a) any pension, retirement, profit sharing, bonus, insurance or other employee benefit plan of the Company or any

Affiliate, except as such plan shall otherwise expressly provide, or (b) any agreement between (i) the Company or any Affiliate and (ii) the Grantee, except as such agreement shall otherwise expressly provide.

18.8 Non-Exclusivity of Plan. Neither the adoption of the Plan by the Board nor its submission to the stockholders of the Company for approval shall be construed as creating any limitations on the power of the Board to adopt other compensatory arrangements for Eligible Persons as it may deem desirable.

18.9 Governing Law. The Plan, and all Award Agreements hereunder, shall be construed in accordance with and governed by the laws of the State of New York, other than its laws respecting choice or conflicts of law rule or principles that might otherwise refer construction or interpretation of the same to the substantive law of another jurisdiction. Unless otherwise provided in an Award Agreement, all Eligible Persons are deemed to submit to the exclusive jurisdiction and venue of the federal or state courts of the Eastern District of State of New York, to resolve any and all issues that may arise out of or relate to the Plan or any related Award Agreement.

18.10 Unfunded Status of Awards; Creation of Trusts. The Plan is intended to constitute an “unfunded” plan for incentive and deferred compensation. With respect to any payments not yet made to a Grantee pursuant to an Award, nothing contained in the Plan or any Award Agreement shall give any such Grantee any rights that are greater than those of a general creditor of the Company; provided, however, that the Committee may authorize the creation of trusts or make other arrangements to meet the Company’s obligations under the Plan to deliver cash, Shares or other property pursuant to any Award which trusts or other arrangements shall be consistent with the “unfunded” status of the Plan unless the Committee otherwise determines.

18.11 Affiliation. Nothing in the Plan or an Award Agreement shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Grantee’s employment or consulting contract at any time, nor confer upon any Grantee the right to continue in the employ of or as an officer of or as a consultant to, or Director of the Company or any Affiliate.

18.12 Participation. No employee, officer, consultant, director or any other person shall have the right to be selected to receive an Award under this Plan or, having been so selected, to be selected to receive a future Award.

18.13 Notices. Any notice to be given to the Company pursuant to the provisions of the Plan will be given by registered or certified mail, postage prepaid, or by recognized overnight delivery service, and addressed, if to the Company to its Secretary (or such other person as the Company may designate in writing from time to time) at its principal executive office, and, if to an Eligible Person, to the address given beneath his or her signature on his or her Award Agreement, or at such other address as such Eligible Person may hereafter designate in writing to the Company. Any such notice will be deemed duly given on the date and at the time delivered via recognized overnight delivery service or, if mailed, on the date five (5) days after the date of the mailing.

18.14 Construction. The following rules of construction will apply to the Plan: (a) the word “or” is disjunctive but not necessarily exclusive, and (b) words in the singular include the plural, words in the plural include the singular, and words in the neuter gender include the masculine and feminine genders and words in the masculine or feminine gender include the neuter gender.

18.15 Headings. The headings of articles and sections are included solely for convenience of reference, and if there is any conflict between such headings and the text of this Plan, the text shall control.

18.16 Obligations. Unless otherwise specified in the Award Agreement, the obligation to deliver, pay or transfer any amount of money or other property pursuant to Awards under this Plan shall be the sole obligation of a Grantee's employer; provided that the obligation to deliver or transfer any Shares pursuant to Awards under this Plan shall be the sole obligation of the Company.

18.17 No Right to Continue as Director. Nothing in the Plan or any Award Agreement shall confer upon any Non-Employee Director the right to continue to serve as a director of the Company.

18.18 Stockholder Approval. All Incentive Stock Options granted on or after the Effective Date and prior to the date the Company's stockholders approve the Plan are expressly conditioned upon and subject to approval of the Plan by the Company's stockholders.



**NONQUALIFIED STOCK OPTION  
AGREEMENT UNDER THE REPRO MED SYSTEMS, INC.  
2021 OMNIBUS EQUITY INCENTIVE PLAN**

<b>Name of Grantee:</b>	_____	(the "Grantee")
<b>No. of Shares Underlying</b>	_____	(the "Underlying Shares")
<b>Options:</b>	_____	
<b>Grant Date:</b>	_____	(the "Grant Date")
<b>Vesting Commencement Date:</b>	_____	("Vesting Commencement Date")
<b>Expiration Date:</b>	_____	(the "Expiration Date")
<b>Exercise Price/Share:</b>	\$ _____	(the "Exercise Price")

Pursuant to the Repro Med Systems, Inc. 2021 Omnibus Equity Incentive Plan (the "Plan"), Repro Med Systems, Inc., a New York corporation (together with all successors thereto, the "Company"), hereby grants to the Grantee, an Option to purchase, on or prior to the Expiration Date (or such earlier date as provided below), all or any part of the number of Shares of Common Stock of the Company indicated above (the "Underlying Shares," with such Shares once issued being referred to herein as "Option Shares") at the Exercise Price per share indicated above.

Notwithstanding anything in this Nonqualified Stock Option Agreement (the "Agreement") to the contrary, this Option and any Option Shares acquired upon shall be subject to, and governed by, all the terms and conditions of the Plan. To the extent there is any inconsistency between the terms of the Plan and of this Agreement, the terms of the Plan shall control.

All capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings given such terms in the Plan.

1. **Vesting and Exercisability.** Subject to such further limitations as are provided in the Plan and as set forth herein, the Option shall vest and become exercisable: [with respect to 25% of the Underlying Shares on each of the first (1st), second (2nd), third (3rd) and fourth (4th) anniversaries of the Vesting Commencement Date until the Option is fully vested and exercisable on the fourth (4th) anniversary of the Vesting Commencement Date.]

2. **Exercise of Option.** Prior to the Expiration Date (or such earlier date provided below), the Grantee may exercise this Option by delivering a Option exercise notice (an "Exercise Notice") in the form of Appendix A hereto indicating his or her election to purchase some or all of the Underlying Shares with respect to which this Option is exercisable at the time of such notice and paying the Exercise Price for the number of Underlying Shares purchased. The Option may not be exercised for any fractional shares.

(a) **Termination of Affiliation.** Except as the Committee may otherwise expressly provide, or as may otherwise be expressly provided in any agreement between the Company and the Grantee, if the Grantee has a Termination of Affiliation with the Company and all of its Affiliates, the period within which the Grantee may exercise this Option may be subject to earlier termination as set forth below:

(b) Termination of Affiliation Due to Death or Disability. If the Grantee's Termination of Affiliation occurs by reason of such Grantee's death or Disability, this Option may be exercised, to the extent exercisable on the date of such termination, by the Grantee or by the Grantee's legal representative or legatee for a period of twelve (12) months from the date of such termination or until the Expiration Date, if earlier.

(c) Forfeiture Event. If the Grantee has a Forfeiture Event, within the meaning of Section 18.5 of the Plan, all Options (unvested and vested) shall terminate immediately.

(d) Other Termination. If the Grantee's Termination of Affiliation occurs for any reason other than death or Disability or Cause, this Option may be exercised, to the extent exercisable on the date of such termination, by the Grantee until the earlier of (i) the date that is three months from the date of the Grantee's Termination of Affiliation or (ii) the Expiration Date.

(e) Treatment of Unvested Options on Termination of Affiliation. Any portion of this Option that is not exercisable on the date of the Grantee's Termination of Affiliation for any reason shall terminate immediately and be null and void and of no further force and effect.

3. **Status of Option**. This Option is intended not to qualify as an "incentive stock option" as defined in Section 422(b) of the Internal Revenue Code of 1986, as amended.

4. **Withholding Taxes**. The Grantee agrees to make appropriate arrangements with the Company (or the appropriate Affiliate that employed the Grantee) for the satisfaction of all applicable Federal, state, local and foreign income and employment tax withholding requirements, if any, arising in connection with the exercise of the Option. The Grantee acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver Shares if the Grantee does not deliver or make arrangements to deliver such required withholding amounts to the Company at the time of exercise.

5. **Miscellaneous Provisions.**

(a) Change and Modifications. This Agreement may not be orally changed, modified or terminated, nor shall any oral waiver of any of its terms be effective. This Agreement may be changed, modified or terminated only by an agreement in writing signed by the Company and the Grantee.

(b) Notices. All notices, requests, consents and other communications shall be in writing and be deemed given when delivered personally, by telex or facsimile transmission or when received if mailed by first class registered or certified mail, postage prepaid. Notices to the Company or the Grantee shall be addressed as set forth underneath their signatures below, or to such other address or addresses as may have been furnished by such party in writing to the other.

(c) Counterparts. For the convenience of the parties and to facilitate execution, this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

(d) Non-assignable. All Options granted hereunder shall not be assignable or transferable other than by will or the laws of descent and distribution and may be exercised, during the Grantee's lifetime, only by the Grantee.

[SIGNATURE PAGE FOLLOWS]

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned as of the date first above written.

**REPRO MED SYSTEMS, INC.**

By:

\_\_\_\_\_  
Name:

Title:

The undersigned hereby acknowledges receiving and reviewing a copy of the Plan and understands that the Option granted hereby is subject to the terms of the Plan and of this Agreement. This Agreement is hereby accepted, and the terms and conditions thereof and of the Plan hereby agreed to, by the undersigned as of the date first above written.

**GRANTEE:**

\_\_\_\_\_  
Name:

DESIGNATION OF BENEFICIARY: \_\_\_\_\_

Appendix A

**STOCK OPTION  
EXERCISE NOTICE**

Repro Med Systems, Inc.  
Attention: Corporate Secretary

Pursuant to the terms of the stock option agreement between myself and Repro Med Systems, Inc. (the "Company") dated \_\_\_\_\_ (the "Agreement"), under the Company's 2021 Omnibus Equity Incentive Plan, I, [Insert Name], hereby [Circle One] partially/fully exercise such Option by including herein payment in the amount of \$\_\_\_\_\_ representing the purchase price for [Fill in number of Underlying Shares] \_\_\_\_\_ Option Shares. I have chosen the following form(s) of payment:

- 1. Cash
- 2. Personal, certified or bank check payable to **Repro Med Systems, Inc.**, or
- 3. Wire transfer.

Sincerely yours,

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_

**INCENTIVE STOCK OPTION  
AGREEMENT UNDER THE REPRO MED SYSTEMS, INC.  
2021 OMNIBUS EQUITY INCENTIVE PLAN**

<b>Name of Grantee:</b>	_____	(the "Grantee")
<b>No. of Shares Underlying Options:</b>	_____	(the "Underlying Shares")
<b>Grant Date:</b>	_____	(the "Grant Date")
<b>Vesting Commencement Date:</b>	_____	("Vesting Commencement Date")
<b>Expiration Date:</b>	_____	(the "Expiration Date")
<b>Exercise Price/Share:</b>	\$ _____	(the "Exercise Price")

Pursuant to the Repro Med Systems, Inc. 2021 Omnibus Equity Incentive Plan (the "Plan"), Repro Med Systems, Inc., a New York corporation (together with all successors thereto, the "Company"), hereby grants to the Grantee, an Option to purchase, on or prior to the Expiration Date (or such earlier date as provided below), all or any part of the number of Shares of Common Stock of the Company indicated above (the "Underlying Shares," with such Shares once issued being referred to herein as "Option Shares") at the Exercise Price per share indicated above.

Notwithstanding anything in this Incentive Stock Option Agreement (the "Agreement") to the contrary, this Option and any Option Shares acquired upon shall be subject to, and governed by, all the terms and conditions of the Plan. To the extent there is any inconsistency between the terms of the Plan and of this Agreement, the terms of the Plan shall control.

All capitalized terms used in this Agreement and not otherwise defined shall have the respective meanings given such terms in the Plan.

1. **Vesting and Exercisability.** Subject to such further limitations as are provided in the Plan and as set forth herein, the Option shall vest and become exercisable: [with respect to 25% of the Underlying Shares on each of the first (1st), second (2nd), third (3rd) and fourth (4th) anniversaries of the Vesting Commencement Date until the Option is fully vested and exercisable on the fourth (4th) anniversary of the Vesting Commencement Date.]

2. **Exercise of Option.** Prior to the Expiration Date (or such earlier date provided below), the Grantee may exercise this Option by delivering a Option exercise notice (an "Exercise Notice") in the form of Appendix A hereto indicating his or her election to purchase some or all of the Underlying Shares with respect to which this Option is exercisable at the time of such notice and paying the Exercise Price for the number of Underlying Shares purchased. The Option may not be exercised for any fractional shares.

(a) **Termination of Affiliation.** Except as the Committee may otherwise expressly provide, or as may otherwise be expressly provided in any agreement between the Company and the Grantee, if the Grantee has a Termination of Affiliation with the Company and all of its Affiliates, the period within which the Grantee may exercise this Option may be subject to earlier termination as set forth below:

(b) Termination of Affiliation Due to Death or Disability. If the Grantee's Termination of Affiliation occurs by reason of such Grantee's death or Disability, this Option may be exercised, to the extent exercisable on the date of such termination, by the Grantee or by the Grantee's legal representative or legatee for a period of twelve (12) months from the date of such termination or until the Expiration Date, if earlier.

(c) Forfeiture Event. If the Grantee has a Forfeiture Event, within the meaning of Section 18.5 of the Plan, all Options (unvested and vested) shall terminate immediately.

(d) Other Termination. If the Grantee's Termination of Affiliation occurs for any reason other than death or Disability or Cause, this Option may be exercised, to the extent exercisable on the date of such termination, by the Grantee until the earlier of (i) the date that is three months from the date of the Grantee's Termination of Affiliation or (ii) the Expiration Date.

(e) Treatment of Unvested Options on Termination of Affiliation. Any portion of this Option that is not exercisable on the date of the Grantee's Termination of Affiliation for any reason shall terminate immediately and be null and void and of no further force and effect.

3. **Status of Option.** This Option is intended to qualify as an "incentive stock option" as defined in Section 422(b) of the Internal Revenue Code of 1986, as amended. Notwithstanding any provision in this Agreement to the contrary, to the extent that any portion of this Option exceeds \$100,000 Limit (as described in Section 6.4(d) and (e) of the Plan) such portion of the Option shall not qualify as an "incentive stock option." In addition, this Option shall not qualify as an "incentive stock option" with respect to the portion of the Option that is exercised more than 3 months after the Grantee ceases to be an employee of the Company or any Subsidiary for any reason other than the Grantee's death or Disability.

4. **Disqualifying Dispositions.** Within 10 days after any Disqualifying Disposition (as defined in Section 6.4(f) of the Plan) of Option Shares acquired upon exercise of this Option, the Grantee shall notify the Company of such Disqualifying Disposition.

5. **Withholding Taxes.** The Grantee agrees to make appropriate arrangements with the Company (or the appropriate Affiliate that employed the Grantee) for the satisfaction of all applicable Federal, state, local and foreign income and employment tax withholding requirements, if any, arising in connection with the exercise of the Option. The Grantee acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver Shares if the Grantee does not deliver or make arrangements to deliver such required withholding amounts to the Company at the time of exercise.

6. **Miscellaneous Provisions.**

(a) Change and Modifications. This Agreement may not be orally changed, modified or terminated, nor shall any oral waiver of any of its terms be effective. This Agreement may be changed, modified or terminated only by an agreement in writing signed by the Company and the Grantee.

(b) Notices. All notices, requests, consents and other communications shall be in writing and be deemed given when delivered personally, by telex or facsimile transmission or when received if mailed by first class registered or certified mail, postage prepaid. Notices to the Company or the Grantee shall be addressed as set forth underneath their signatures below, or to such other address or addresses as may have been furnished by such party in writing to the other.

(c) Counterparts. For the convenience of the parties and to facilitate execution, this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

(d) Non-assignable. All Options granted hereunder shall not be assignable or transferable other than by will or the laws of descent and distribution and may be exercised, during the Grantee's lifetime, only by the Grantee.

The foregoing Agreement is hereby accepted and the terms and conditions thereof hereby agreed to by the undersigned as of the date first above written.

**REPRO MED SYSTEMS, INC.**

By:

\_\_\_\_\_  
Name:

Title:

The undersigned hereby acknowledges receiving and reviewing a copy of the Plan and understands that the Option granted hereby is subject to the terms of the Plan and of this Agreement. This Agreement is hereby accepted, and the terms and conditions thereof and of the Plan hereby agreed to, by the undersigned as of the date first above written.

**GRANTEE:**

Name:

DESIGNATION OF BENEFICIARY: \_\_\_\_\_

Appendix A

**STOCK OPTION  
EXERCISE NOTICE**

Repro Med Systems, Inc.  
Attention: Corporate Secretary

Pursuant to the terms of the stock option agreement between myself and Repro Med Systems, Inc. (the "Company") dated \_\_\_\_\_ (the "Agreement"), under the Company's 2021 Omnibus Equity Incentive Plan, I, [Insert Name], hereby [Circle One] partially/fully exercise such Option by including herein payment in the amount of \$\_\_\_\_\_ representing the purchase price for [Fill in number of Underlying Shares] \_\_\_\_\_ Option Shares. I have chosen the following form(s) of payment:

- 1. Cash
- 2. Personal, certified or bank check payable to **Repro Med Systems, Inc.**, or
- 3. Wire transfer.

Sincerely yours,

Name:

\_\_\_\_\_

Address:

\_\_\_\_\_



EXHIBIT 10.4

**INDEMNIFICATION AGREEMENT**

This Indemnification Agreement (this "Agreement") is made as of \_\_\_\_\_, 2021 by and between Repro Med Systems, Inc. d/b/a KORU Medical Systems, a New York corporation (the "Company"), and \_\_\_\_\_ ("Indemnitee").

WHEREAS, highly competent persons have become more reluctant to serve publicly-held corporations as directors or officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation and due to the fact that such exposure frequently bears no relationship to compensation paid to such officers and directors;

WHEREAS, the Company and Indemnitee recognize that plaintiffs often seek damages in such large amounts and the costs of litigation may be so enormous (whether or not the case is meritorious), that the defense and/or settlement of such litigation is often beyond the personal resources of directors and officers;

WHEREAS, the Company's Certificate of Incorporation and Bylaws require indemnification of the officers and directors of the Company to the maximum extent permitted by the laws of the State of New York and federal securities laws;

WHEREAS, the Company, after reasonable investigation, has determined that the liability insurance coverage presently available to the Company may be inadequate in certain circumstances to cover all possible exposure for which Indemnitee should be protected;

WHEREAS, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining highly competent persons to serve as directors and officers, and the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

WHEREAS, this Agreement is a supplement to and in furtherance of the Company's Certificate of Incorporation and Bylaws and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

WHEREAS, Indemnitee does not regard the protection available under the Company's Certificate of Incorporation, Bylaws and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity, and Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he be so indemnified;

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, intending to be legally bound, the Company and Indemnitee do hereby covenant and agree as follows:

---

1. Services to the Company. Indemnitee agrees to serve as a director or officer of the Company or, at the request of the Company, as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any other corporation, limited liability company, partnership, joint venture, trust employee benefit plan or other enterprise of which Indemnitee was serving at the Company's request as a director, officer, employee, agent or fiduciary) and Indemnitee. Indemnitee specifically acknowledges that Indemnitee's employment with the Company (or any of its subsidiaries or any other corporation, limited liability company, partnership, joint venture, trust employee benefit plan or other enterprise of which Indemnitee was serving at the Company's request as a director, officer, employee, agent or fiduciary), if any, is at will, and the Indemnitee may be discharged at any time for any reason, with or without cause, except as may be otherwise provided in any written employment contract between Indemnitee and the Company (or any of its subsidiaries or any other corporation, limited liability company, partnership, joint venture, trust employee benefit plan or other enterprise of which Indemnitee was serving at the Company's request as a director, officer, employee, agent or fiduciary). The foregoing notwithstanding, this Agreement shall continue in force after Indemnitee has ceased to serve as an officer or director of the Company.

2. Definitions. As used in this Agreement:

(a) A "Change in Control" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

i. Acquisition of Stock by Third Party. Any Person (as defined below) is or becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing thirty-five percent (35%) or more of the combined voting power of the Company's then outstanding securities;

ii. Change in Board. During any period of two (2) consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Board, and any new director (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 2(a)(i), 2(a)(iii) or 2(a)(iv)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Board;

iii. Corporate Transactions. The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 51% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

i v . Liquidation. The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

v . Other Events. There occurs any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or a response to any similar item on any similar schedule or form) promulgated under the Exchange Act (as defined below), whether or not the Company is then subject to such reporting requirement.

For purposes of this Section 2(a), the following terms shall have the following meanings:

(A) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

(B) "Person" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Exchange Act; provided, however, that Person shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(C) "Beneficial Owner" shall have the meaning given to such term in Rule 13d-3 under the Exchange Act; provided, however, that Beneficial Owner shall exclude any Person otherwise becoming a Beneficial Owner by reason of the stockholders of the Company approving a merger of the Company with another entity.

(b) "Corporate Status" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, limited liability company, partnership or joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Company.

(c) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(d) "Expenses" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 13(d) only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(e) "Independent Counsel" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) "Proceeding" shall include any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative legislative, or investigative nature, including any appeal therefrom, in which Indemnitee was, is or will be involved as a party, potential party, non-party witness or otherwise by reason of the fact that Indemnitee is or was a director or officer of the Company, by reason of any action taken by him or of any action on his part while acting as director or officer of the Company, or by reason of the fact that he is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, in each case whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses can be provided under this Agreement; except one initiated by an Indemnitee to enforce his rights under this Agreement.

3 . Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal proceeding had no reasonable cause to believe that his conduct was unlawful.

4 . Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company, unless and only to the extent that any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification.

5 . Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provisions of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is a party to (or a participant in) and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. If the Indemnitee is not wholly successful in such Proceeding, the Company also shall indemnify Indemnitee against all Expenses reasonably incurred in connection with a claim, issue or matter related to any claim, issue, or matter on which the Indemnitee was successful. For purposes of this Section and without limiting the foregoing, if any Proceeding is disposed of, on the merits or otherwise (including a disposition without prejudice), without (i) the disposition being adverse to Indemnitee, (ii) an adjudication that Indemnitee was liable to the Company, (iii) a plea of guilty or nolo contendere by Indemnitee, (iv) an adjudication that Indemnitee did not act in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Company and (v) with respect to any criminal proceeding, an adjudication that Indemnitee had reasonable cause to believe Indemnitee's conduct was unlawful, Indemnitee shall be considered for purposes of this Agreement to have been successful with respect thereto.

6 . Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of his Corporate Status, a witness or otherwise participates in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

7. Additional Indemnification.

(a) Notwithstanding any limitation in Sections 3, 4, or 5, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is a party to or threatened to be made a party to any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee in connection with the Proceeding.

(b) For purposes of Section 7(a), the meaning of the phrase "to the fullest extent permitted by applicable law" shall include, but not be limited to:

i. to the fullest extent permitted by the provision of the New York Business Corporation Law ("NYBCL") that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the NYBCL, and

ii. to the fullest extent authorized or permitted by any amendments to or replacements of the NYBCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

8 . Exclusions. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any insurance policy or other indemnity provision; or

(b) for any Proceedings with respect to which final judgment is rendered against Indemnitee for payment of (i) an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act (as defined in Section 2(a) hereof) or similar provisions of state statutory law or common law, or (ii) any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), or

(c) any Proceeding involving the enforcement of non-compete and/or non-disclosure agreements or the non-compete and/or non-disclosure provisions of employment, consulting or similar agreements the Indemnitee may be a party to with the Company or any subsidiary of the Company or any other applicable foreign or domestic corporation, partnership, joint venture, trust or other enterprise, if any; or

(d) except as provided in Section 13(d) of this Agreement, in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

9 . Advances of Expenses. The Company shall advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding, and such advancement shall be made within thirty (30) days after receipt by the Corporation of (i) a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of any Proceeding, and (ii) an undertaking by or on behalf of Indemnitee to repay such amount or amounts, only if, and to the extent that, it shall ultimately be determined that Indemnitee is not entitled to be indemnified by the Corporation as authorized by this Agreement or otherwise. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment. Advances shall be unsecured and interest free. Advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. This Section 9 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 8 or to any Proceeding for which the Company has assumed the defense thereof in accordance with Section 10(b) of this Agreement.

10. Procedure for Notification and Defense of Claim.

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses hereunder as soon as reasonably practicable following the receipt by Indemnitee of written notice thereof. The written notification to the Company shall include a description of the nature of the Proceeding and the facts underlying the Proceeding. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of such action, suit or proceeding. The omission by Indemnitee to notify the Company hereunder will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, and any delay in so notifying the Company shall not constitute a waiver by Indemnitee of any rights under this Agreement. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification.

(b) In the event the Company shall be obligated to pay the Expenses of Indemnitee with respect to a Proceeding, as provided in this Agreement, the Company shall be entitled to assume the defense of such Proceeding, with counsel reasonably acceptable to Indemnitee, upon delivery of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and retention of such counsel by the Company, the Company will not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same Proceeding, provided that (1) Indemnitee shall have the right to employ Indemnitee's own counsel in such Proceeding at Indemnitee's expense and (2) if (i) the employment of counsel by Indemnitee has been previously authorized in writing by the Company, (ii) counsel to the Company or Indemnitee shall have reasonably concluded that there may be a conflict of interest or position, or reasonably believes that a conflict is likely to arise, on any significant issue between the Company and the Indemnitee in the conduct of such defense or (iii) the Company shall not, in fact, have employed counsel to assume the defense of such Proceeding, then the fees and expenses of Indemnitee's counsel shall be at the expense of the Company, except as otherwise expressly provided by this Agreement.

(c) The Company will be entitled to participate in the Proceeding at its own expense.

11. Procedure Upon Application for Indemnification.

(a) Upon written request by Indemnitee for indemnification pursuant to Section 10(a), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case: (i) if a Change in Control shall have occurred after the date of this Agreement, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee; or (ii) if a Change in Control shall not have occurred after the date of this Agreement, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Board, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Board, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Disinterested Directors, by the stockholders of the Company; and, if it is so determined that Indemnitee is entitled to

indemnification, payment to Indemnitee shall be made within ten (10) days after such determination. Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or Expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(b) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 11(a) hereof, the Independent Counsel shall be selected as provided in this Section 11(b). If a Change in Control shall not have occurred after the date of this Agreement, the Independent Counsel shall be selected by the Board, and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred after the date of this Agreement, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after the submission by Indemnitee or the Company, as the case may be, of a written objection, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the Court or by such other person as the Court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 11(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 13(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

## 12. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 10(a) of this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that



presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(b) Subject to Section 13(e), if the person, persons or entity empowered or selected under Section 11 of this Agreement to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall, to the fullest extent not prohibited by law, be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such 60-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 12(b) shall not apply (i) if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 11(a) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination the Board has resolved to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy-five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat, or (ii) if the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 11(a) of this Agreement.

(c) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his conduct was unlawful.

(d) Reliance as Safe Harbor. For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Company or other corporation, limited liability company, partnership, joint venture, trust employee benefit plan or other enterprise of which Indemnitee was serving as a director, officer, employee, agent or fiduciary, including financial statements, or on information supplied to Indemnitee by the officers of the Company or other corporation, limited liability company, partnership, joint venture, trust employee benefit plan or other enterprise of which Indemnitee was serving as a

director, officer, employee, agent or fiduciary in the course of their duties, or on the advice of legal counsel for the enterprise or on information or records given or reports made to the Company or other corporation, limited liability company, partnership, joint venture, trust employee benefit plan or other enterprise of which Indemnitee was serving as a director, officer, employee, agent or fiduciary by an independent certified public accountant or by an appraiser or other expert selected with the reasonable care by the Company or other corporation, limited liability company, partnership, joint venture, trust employee benefit plan or other enterprise of which Indemnitee was serving as a director, officer, employee, agent or fiduciary. The provisions of this Section 12(d) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(e) Actions of Others. The knowledge and/or actions, or failure to act, of any other director, officer, agent or employee of the Company or other corporation, limited liability company, partnership, joint venture, trust employee benefit plan or other enterprise of which Indemnitee was serving as a director, officer, employee, agent or fiduciary shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

13. Remedies of Indemnitee.

(a) Subject to Section 13(e), in the event that (i) a determination is made pursuant to Section 11 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 9 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 11(a) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 or the last sentence of Section 11(a) of this Agreement within ten (10) days after receipt by the Company of a written request therefor, (v) payment of indemnification pursuant to Section 3, 4 or 7 of this Agreement is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification, or (vi) in the event that the Company or any other person takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or Proceeding designed to deny, or to recover from, the Indemnitee the benefits provided or intended to be provided to the Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by a court of his entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 13(a); provided, however, that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his rights under Section 5 of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 11(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 13 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 13 the Company shall have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 11(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 13, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 13 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. It is the intent of the Company that the Indemnitee not be required to incur legal fees or other Expenses associated with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement by litigation or otherwise because the cost and expense thereof would substantially detract from the benefits intended to be extended to the Indemnitee hereunder. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefor) advance, to the extent not prohibited by law, such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

14. Non-exclusivity; Survival of Rights; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Company's Certificate of Incorporation, the Company's By-laws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in New York law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company's Certificate of Incorporation, the Company's By-laws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company and the Indemnitee shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee with respect to any insurance policy, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable (or for which advancement is provided hereunder) hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) The Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of Expenses from such other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise.

15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

16. Enforcement. The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

17. Entire Agreement. Supersedes Prior Agreements. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate of Incorporation of the Company and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

18. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver.

19. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or advancement of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise except to the extent the Corporation is prejudiced in its defense of such action, suit or proceeding as a result of such failure.

20. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and receipted for by the party to whom said notice or other communication shall have been directed or (d) sent by facsimile transmission, with receipt of oral confirmation that such transmission has been received:

(a) If to Indemnitee, to such address as Indemnitee shall provide to the Company.

(b) If to the Company, to Repro Med Systems, Inc., 24 Carpenter Road, Chester NY 10918, Attention: Chairman of the Board, or to any other address as may have been furnished to Indemnitee by the Company.

21. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

22. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the

State of New York, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 13(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought in a New York state court or federal court sitting in New York, (ii) consent to submit to the exclusive jurisdiction of such court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in such court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in such court has been brought in an improper or inconvenient forum.

2 3 . Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

2 4 . Miscellaneous. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Indemnification Agreement to be signed as of the day and year first above written.

THE COMPANY:

REPRO MED SYSTEMS, INC.

By: \_\_\_\_\_

Name:

Title:

INDEMNITEE:

\_\_\_\_\_  
Name:

**EXHIBIT 31.1**

**RULE 13A-14(A) / 15D-14(A) CERTIFICATION OF  
PRINCIPAL EXECUTIVE OFFICER**

I, Linda Tharby, Principal Executive Officer, certify that:

- 1) I have reviewed this Quarterly Report on Form 10-Q of Repro Med Systems, Inc. (the "Report");
- 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 this equivalent function):
  - (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 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: August 11, 2021

/s/ Linda Tharby

Linda Tharby

President and Chief Executive Officer

---



**EXHIBIT 31.2**

**RULE 13A-14(A) / 15D-14(A) CERTIFICATION OF  
PRINCIPAL FINANCIAL OFFICER**

I, Karen Fisher, Principal Financial Officer, certify that:

- 1) I have reviewed this Quarterly Report on Form 10-Q of Repro Med Systems, Inc. (the "Report");
- 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 this equivalent function):
  - (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 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: August 11, 2021

/s/ Karen Fisher

Karen Fisher  
Chief Financial Officer and Treasurer

---

**EXHIBIT 32.1**

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350  
AS ADDED BY SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Repro Med Systems, Inc. (the "Company") on Form 10-Q (the "Report") for the quarter ended June 30, 2021 as filed with the Securities and Exchange Commission, I, Linda Tharby, Principal Executive Officer, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: August 11, 2021

/s/ Linda Tharby

Linda Tharby  
President and Chief Executive Officer

---

**EXHIBIT 32.2**

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350  
AS ADDED BY SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Repro Med Systems, Inc. (the "Company") on Form 10-Q (the "Report") for the quarter ended June 30, 2021 as filed with the Securities and Exchange Commission, I, Karen Fisher, Principal Financial Officer, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: August 11, 2021

/s/ Karen Fisher

Karen Fisher  
Chief Financial Officer and Treasurer

---