

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

ACACIA RESEARCH CORP

Form: 10-K

Date Filed: 2020-03-16

Corporate Issuer CIK: 934549

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

FORM 10-K

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

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2019

OR

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

Commission File Number 001-37721



(Exact name of registrant as specified in its charter)

DELAWARE

(State or other jurisdiction of
incorporation organization)

95-4405754

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

4 PARK PLAZA, SUITE 550

IRVINE, CA

(Address of principal executive offices)

92614

(Zip Code)

Registrant's telephone number, including area code: **(949) 480-8300**

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>
Common Stock, \$0.001 par value	ACTG	The NASDAQ Stock Market, LLC

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

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to 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 an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer
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 Act). Yes No

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates of the registrant on June 30, 2019, the last business day of the registrant's most recently completed second fiscal quarter, computed by reference to the last sale price of the registrant's common stock as

reported by The Nasdaq Global Select Market on such date, was approximately \$147,673,000. This computation assumes that all executive officers and directors are affiliates of the registrant. Such assumption should not be deemed conclusive for any other purpose.

As of March 11, 2020, 50,385,341 shares of common stock were issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

In accordance with General Instruction G(3) to Form 10-K, portions of the registrant's Definitive Proxy Statement on Schedule 14A for its Annual Meeting of Stockholders to be filed with the Commission within 120 days after the close of the fiscal year covered by this Annual Report on Form 10-K are incorporated by reference into Part III of this Annual Report on Form 10-K. Only those portions of the proxy statement that are specifically incorporated by reference herein shall constitute a part of this Annual Report on Form 10-K.

ACACIA RESEARCH CORPORATION
ANNUAL REPORT ON FORM 10-K
FISCAL YEAR ENDED DECEMBER 31, 2019
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PART I

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

As used in this Annual Report on Form 10-K, or the annual report, “we,” “us” and “our” refer to Acacia Research Corporation and/or its wholly and majority-owned operating subsidiaries. All patent portfolio investments, development, licensing and enforcement activities are conducted solely by certain of our wholly owned operating subsidiaries.

This annual report, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which include, without limitation, statements about our future business operations and results, our strategies and competition, and other forward-looking statements included in this annual report. Such statements may be identified by the use of forward-looking terminology such as “may,” “will,” “expect,” “believe,” “estimate,” “anticipate,” “intend,” “continue,” or similar terms, variations of such terms or the negative of such terms. Such statements are based on management’s current expectations and are subject to a number of risks and uncertainties, which could cause actual results to differ materially from those described in the forward-looking statements. Such statements address future events and conditions concerning earnings, capital expenditures, litigation, competition, regulatory matters, stock price volatility, liquidity and capital resources, accounting matters and investments. Actual results in each case could differ materially from those anticipated in such statements by reason of factors such as future economic conditions, legislative, regulatory and competitive developments in markets in which we and our subsidiaries operate, and other circumstances affecting anticipated revenues and costs, as more fully disclosed in our discussion of “Risk Factors” in Item 1A of Part I of this annual report. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based. Additional factors that could cause such results to differ materially from those described in the forward-looking statements are set forth in connection with the forward-looking statements.

ITEM 1. BUSINESS

General

We invest in intellectual property, or IP, and related absolute return assets and engage in the licensing and enforcement of patented technologies. We partner with inventors and patent owners, from small entities to large corporations, applying our legal and technology expertise to patent assets to unlock the financial value in their patented inventions. We are an intermediary in the patent marketplace, bridging the gap between invention and application, and facilitating efficiency in connection with the monetization of patent assets.

We generate revenues and related cash flows from the granting of IP rights for the use of patented technologies that our operating subsidiaries control or own. We assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, where necessary, with the enforcement against unauthorized users of their patented technologies through the filing of patent infringement litigation. Currently, on a consolidated basis, our operating subsidiaries own or control the rights to multiple patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a variety of industries.

We have established a proven track record of licensing and enforcement success with over 1,570 license agreements executed to date, across nearly 200 patent portfolio licensing and enforcement programs. To date, we have generated gross licensing revenue of approximately \$1.6 billion, and have returned more than \$776 million to our patent partners.

Corporate Information

We were originally incorporated in California in January 1993 and reincorporated in Delaware in December 1999. Our website address is www.acaciaresearch.com. Reference in this annual report to this website address does not constitute incorporation by reference of the information contained on or accessed through our website and references to our website address in this annual report are inactive textual references only. We make our filings with the Securities and Exchange Commission, or the SEC, including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, other reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act, and amendments to the foregoing reports, available free of charge on or through our website as soon as reasonably practicable after we file these reports with, or furnish such reports to, the SEC. In addition, we post the following information on our website:

- our code of conduct for chief executive officer and other senior financial officers;
- our code of conduct for employees and directors and our fraud policy;
- our insider trading policy; and
- charters for our audit committee, nominating and corporate governance committee and compensation committee.

Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at <http://www.sec.gov>.

Patent Licensing and Enforcement Business

Patents are an important asset class worldwide. Licensing and enforcing patents requires an experienced, well-capitalized, licensing partner. We have partnered with patent owners, including individual inventors, universities, small companies and large multi-national corporations in a variety of technology sectors. These patent owners may possess limited internal resources and/or expertise to effectively address the unauthorized use of their patented technologies, or may seek to effectively and efficiently monetize their portfolio of patented technologies on an outsourced basis.

Under U.S. law, a patent owner has the right to exclude others from making, selling or using their patented invention. A third-party infringes a patent by making, offering for sale, selling, or using a patented invention without a license from the patent owner. In the majority of cases, infringers are generally unwilling, at least initially, to negotiate or pay reasonable license fees for their unauthorized use of third-party patents and will typically indiscriminately challenge any allegations of patent infringement. Inventors and patent holders without sufficient legal, financial and expert technical resources to bring and continue the pursuit of costly and complex patent infringement actions are often effectively ignored.

As a result of the common reluctance of patent infringers to negotiate and ultimately enter into a patent license for the use of patented technologies without at least the threat of legal action, patent licensing and enforcement often begins with the filing of patent infringement litigation. However, in our experience, most patent infringement litigation settles out of court at amounts that are related to the strength of the patent portfolio and the value of the invention or inventions in the infringer's products or services. We execute agreements that grant rights in our patents to users of our patented technologies. Our agreements can be negotiated without the filing of patent litigation, or negotiated within the context of ongoing patent litigation, depending on the specific facts and circumstances.

We are a principal in the licensing and enforcement effort, with our operating subsidiaries obtaining control of the rights in the patent portfolio, or control of the patent portfolio outright. Our relationship with patent owners drives our corporate strategy. We assume all responsibility for advancing operational expenses while pursuing a patent licensing and enforcement program, and then, when applicable, share net licensing revenue with our patent partners as that program matures, on a pre-arranged and negotiated basis. We may also provide upfront capital to patent owners as an advance against future licensing revenue.

Patent Licensing Business Model and Strategy - Overview

We have the flexibility to structure arrangements in a number of ways to address the needs and specific sets of circumstances presented by each of our unique patent partners, ranging from outright purchases to various forms of partnering arrangements.

Generally, we maintain a 100% to 200% preferred rate of return until all deployed capital and advanced operational costs are recovered by us. After recovery of these costs, the net profit revenue share with patent partner commences, if applicable.

Key Elements of Business Strategy

Patent licensing and enforcement can be an effective and efficient way to maximize the profit potential of a patent, or patents, that are being practiced by third-parties without authorization. A patent license agreement grants a third-party user of an invention specific patent rights to the patented invention in exchange for patent license fees. Our patent licensing business provides patent holders with an opportunity to generate income from their patented inventions being practiced by third-parties without authorization and from third-parties that desire to practice their patented inventions with authorization. Our patent licensing and enforcement business strategy includes three fundamental elements, as follows:

- *Patent Discovery* - Discover potentially valuable patents or patent portfolios.
- *Assessment of Economic Value* - Work internally and with external experts to evaluate the use of the patented invention(s) in the relevant marketplace and assess a patent or patent portfolio's expected economic value.
- *Licensing and Enforcement* - License those users wanting to utilize the patented invention with authorization. For unauthorized users of the patented invention, enter into license negotiations and, if necessary, litigation to monetize the patent based on its assessed value.

Patent Discovery. The patent process breeds, encourages and sustains innovation and invention by granting a limited monopoly to the inventor in exchange for sharing the invention with the public. Certain technologies become core technologies in the way products and services are manufactured, sold or delivered by companies across a wide array of industries. Patent discovery involves identifying core, patented technologies that have been or are anticipated to be widely adopted by third-parties in connection with the manufacture, sale or use of products and services.

Assessment of Economic Value. Subsequent to the patent discovery process, our executives work internally and/or with external industry experts in the specific technology field, to evaluate the patented invention and its adoption and implementation in the marketplace. There are a number of factors to consider when analyzing a patent and determining a patent's value including, (i) infringement, (ii) validity, (iii) enforceability and (iv) extent of usage.

To determine infringement, we must first identify third-parties that are practicing the invention(s) covered by the patent without obtaining permission from the patent owner to do so. A key tool in determining whether or not a company is infringing a patent is a claim chart, which demonstrates how the manufacture, sale, or use of an existing product compares against the claims of the patent.

The three main factors analyzed to determine validity are: (1) anticipation, which occurs when the claims of the patent are entirely revealed within a single piece of prior art, (2) obviousness which considers whether the differences between prior art and the patented invention are so slight that they would have been obvious at the time of invention to one who is skilled in the subject matter being patented, and (3) the existence of non-patentable subject matter, which considers whether the subject matter includes naturally occurring things, abstract concepts, or algorithms that perform an ordinary function.

To determine enforceability, a number of factors are analyzed, including whether or not there has been patent misuse, or whether or not there are antitrust violations associated with the patent. Due to the inherently complex nature of patent law, only a court or specific administrative body, such as the International Trade Commission, can make a decision whether a patent is infringed, valid and enforceable; however, we employ our wealth of expertise to make the best assessment possible given a specific fact pattern and set of circumstances.

We estimate a patent's economic value by evaluating the expected value of the license revenue stream based on past, present and future revenue of infringing products or services, and the risk that a court will disagree with our infringement, validity or enforcement assessments of the patent. The processes and procedures employed in connection with the evaluation of a specific patent portfolio for future investment, licensing and enforcement are tailored and unique to each specific situation and can vary widely based on the specific facts and circumstances of a specific patent portfolio, such as the related technology, related industry and other factors.

Our business development efforts are geared toward maintaining those relationships and identifying and growing new relationships in order to generate new technology-based patent opportunities for sustainable revenue and /or revenue growth.

Legislative and legal changes have increased the complexity of patent enforcement actions. We believe that this provides Acacia a competitive advantage, as many patent monetization entities have either given up or failed. Furthermore, the challenging legislative environment has kept patent asset acquisition prices low.

In fiscal year 2018 and 2019, Acacia experienced a number of changes in the Company's outlook and leadership. With new management in place during the years, the focus was on capturing the value of remaining portfolio assets while starting to rebuild the new business pipeline. In addition, we began to pursue other business opportunities which complement our legacy licensing and enforcement business and leverage our IP expertise, as described below.

Licensing and Enforcement. The final step in the patent licensing and enforcement process is to seek to monetize the patent portfolio by securing license agreements based on the patents use in the marketplace and estimated value. While we prefer to convince unauthorized users of our patented inventions of the value of the patented invention and secure a license agreement in a non-litigious manner, many infringers refuse to take such licenses even when confronted with substantial and persuasive evidence of infringement, validity, enforceability and significant economic value. As a result, often we must resort to litigation to demonstrate and prove infringement and ultimately induce infringers to take a license from us. We often negotiate licenses concurrently with litigation due to the fact that litigation necessitates and facilitates an information exchange that helps both sides assess the value of a patent and make informed decisions. Also, litigation eventually leads to a court's judgment. When a court agrees with our assessment of a patent, this judgment stops recalcitrant infringers from utilizing the patented technology indefinitely, without appropriate authorization.

We engage highly competent and experienced patent lawyers to prosecute our patent portfolio litigation. It is imperative for us to be persistent and patient throughout the litigation process as it typically takes 18-36 months from the filing date of a lawsuit to yield a license agreement from a potential licensee. Often, it takes longer to secure a final court judgment.

Patent license negotiations and litigation initiated by our operating subsidiaries usually lead to serious and thoughtful discussions with the unauthorized users of the patented inventions. The result can be quite favorable with the user being granted rights under the patents for the patented invention in its products and services in exchange for financial remuneration.

Recent Developments

In 2019, as part of its strategy to grow the Company began evaluating a wide range of strategic opportunities that culminated in the strategic investment in the Company by certain funds and accounts affiliated with, or managed by, Starboard Value LP, or Starboard. On November 18, 2019, the Company entered into a Securities Purchase Agreement with Starboard, or the Securities Purchase Agreement, pursuant to which Starboard purchased (i) 350,000 shares of the Company's newly designated Series A Convertible Preferred Stock, or Series A Preferred Stock, at an aggregate purchase price of \$35,000,000, and warrants to purchase up to 5,000,000 shares of the Company's common stock, or Series A Warrants. The Securities Purchase Agreements also established the terms of certain senior secured notes and additional warrants, or the Series B Warrants, which may be issued to Starboard in the future. Refer to Notes 16, 17 and 19 to our notes to consolidated financial statements for more information related to the Series A Preferred Stock, Series A Warrants and Series B Warrants. In connection with Starboard's investment, Starboard was granted certain corporate governance rights, including the right to appoint Jonathan Sagal, Managing Director of Starboard, as a director of the Company and recommend two additional directors for appointment to our board of directors. The investment by Starboard is referred to herein as the "Starboard Investment," and the Series A Preferred Stock, Series A Warrants and Series B Warrants are referred to herein as, collectively, the "Starboard Securities."

Investments

In August 2016, we entered into an investment agreement with Veritone, Inc., or Veritone, in connection with which we provided a total of \$53.3 million in funding to Veritone. As of December 31, 2019, the Company's investment in Veritone, which includes shares of common stock and warrants to purchase common stock, totaled \$1.5 million.

In June 2017 and February 2018, we made equity investments totaling \$8.25 million in Miso Robotics, Inc., or Miso Robotics. As of June 30, 2019, we recorded an impairment of \$8.2 million for our investment in Miso Robotics. In September 2019, we received a cash payment of \$2.0 million upon the sale of our entire investment, and therefore relinquished our ownership interest in Miso Robotics.

Patented Technologies

Currently, on a consolidated basis, our operating subsidiaries own or control the rights to patent portfolios covering technologies used in a number of industries, including: transportation and automotive, telecommunications, semiconductor, consumer electronics, energy efficiency, wireless, video/imaging and medical devices.

Refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations - Overview" for a summary of patent portfolios generating revenues for the applicable periods presented.

Competition

We encounter competition in the area of patent portfolio investment opportunities and enforcement. Existing non-practicing entities compete in acquiring rights to IP assets, and more entities may enter or leave the market in future periods.

We also compete with financial firms, corporate buyers and others acquiring IP and investing in other technology opportunities. Many of these competitors may have more financial and human resources than us. We may find more companies entering the market for similar technology opportunities, which may reduce our market share in one or more technology industries that we currently or in the future may rely upon to generate future revenue.

Companies or other entities may develop competing technologies that offer better or less expensive alternatives to our patented technologies or technology partnerships. Many potential competitors may have significantly greater resources than the resources that we or our operating subsidiaries possess. Such technological advances or entirely different approaches developed by one or more of our competitors could render certain of the technologies owned or controlled by us obsolete and/or uneconomical.

Employees

As of December 31, 2019, on a consolidated basis, we had 17 full-time employees. Neither we, nor any of our subsidiaries, are a party to any collective bargaining agreement. We believe we have good relations with our employees.

ITEM 1A. RISK FACTORS

An investment in our common stock involves risks. You should carefully consider the risks described below, together with all of the other information included in this annual report, as well as in our other filings with the SEC, in evaluating our business. The risks described below are not the only risks we face. Additional risks that we do not yet know of or that we currently believe are immaterial may also impair our business operations. If any of the following risks actually occur, our business, financial condition and results of operations could be materially adversely affected, and the trading price of our common stock could decline significantly. Certain statements below may be considered forward-looking statements. For additional information, see "Cautionary Note Regarding Forward-Looking Statements."

Risks Related to Our Business

We have a history of losses and may incur additional losses in the future .

We reported a net loss of \$17.1 million (includes \$9.9 million of unrealized equity investment gains), and a net loss of \$105.0 million (including \$59.1 million of unrealized equity investment losses) for the years ended December 31, 2019 and 2018, respectively, and on a cumulative basis, we have sustained substantial losses since our inception. As of December 31, 2019, our accumulated deficit was \$439.7 million. As of December 31, 2019, we had approximately \$168.3 million in cash and cash equivalents and trading securities and working capital of \$160.1 million. Although we believe that our current cash and cash equivalents and investments will be sufficient to finance our anticipated capital and operating requirements for at least the next twelve months, we expect to continue incurring significant legal, general and administrative expenses in connection with our operations. As a result, we anticipate that we may incur losses in the future. Additional increases in our expenses without commensurate increases in revenues could significantly increase our operating losses. Any additional operating losses may have a material adverse effect on our stockholders' equity and overall financial condition.

Recent U.S. tax legislation may adversely affect our financial condition, results of operations and cash flows, including the ability to use net operating losses and certain other tax attributes.

Our ability to use our federal and state net operating losses to offset potential future taxable income and related income taxes that would otherwise be due is dependent upon our generation of future taxable income before the expiration dates of the net operating losses, and we cannot predict with certainty when, or whether, we will generate sufficient taxable income to use all or any portion of our net operating losses. In addition, utilization of net operating losses to offset potential future taxable income and related income taxes that would otherwise be due is subject to annual limitations under the "ownership change" provisions of Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, and similar state provisions, which may result in the expiration of net operating losses before future utilization. In general, under the Code, if a corporation undergoes an "ownership change," generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating losses and other pre-change tax attributes (such as research and development credit carryforwards) to offset its post-change taxable income or taxes may be limited. Changes in our stock ownership, some of which may be outside of our control, could in the future result in an ownership change. Although we have adopted a Tax Benefits Preservation Plan and a provision in our certificate of incorporation, each of which are designed to discourage investors from acquiring ownership of our common stock in a manner that could trigger an ownership change, and we have completed studies to provide reasonable assurance that an ownership change limitation would not apply, we cannot be certain that a taxing authority would reach the same conclusion. If, after a review or audit, an ownership change limitation were to apply, utilization of our domestic net operating losses and tax credit carryforwards could be limited in future periods and a portion of the carryforwards could expire before being available to reduce future income tax liabilities.

If we encounter unforeseen difficulties with our business or operations in the future that require us to obtain additional working capital, and we cannot obtain additional working capital on favorable terms, or at all, our business may suffer.

Our consolidated cash and cash equivalents and trading securities totaled \$168.3 million and \$165.5 million at December 31, 2019 and 2018, respectively. To date, we have relied primarily upon net cash flows from our operations and from the public and private sale of equity securities to generate the working capital needed to finance our operations. We may encounter unforeseen difficulties with our business or operations in the future that may deplete our capital resources more rapidly than anticipated. As a result, we may be required to obtain additional working capital in the future through bank credit facilities, public or private debt or equity financings, or otherwise. If we are required to raise additional working capital in the future, such financing may be unavailable to us on favorable terms, if at all, or may be dilutive to our existing stockholders. If we fail to obtain additional working capital, as and when needed, such failure could have a material adverse impact on our business, results of operations and financial condition.

Failure to effectively manage our operational changes could strain our managerial, operational and financial resources and could adversely affect our business and operating results.

Operational changes primarily relate to changes in our board of directors and senior management. During 2018, we announced various changes to our board of directors and senior management, including a reconstituted board of directors and the terminations of our President, our Chief Financial Officer, Senior Vice President of Finance and Treasurer and our Executive Vice President, General Counsel and Secretary. We also announced in 2018 the appointment of our new Chief Intellectual Property Officer Marc W. Booth. In 2019 we appointed Clifford Press as our new Chief Executive Officer, and Alfred V. Tobia, Jr. as our new President and Chief Investment Officer. Changes in leadership and key management positions have inherent risks, and there are no assurances that any of our recent changes will not affect our financial condition.

If we fail to manage our operational changes effectively or to develop, expand or otherwise modify our managerial, operational and financial resources and systems, our business and financial results will be materially harmed.

Patent portfolio investments may present risks, and we may be unable to achieve the financial or other goals intended at the time of any potential investment.

Our licensing and enforcement business has depended, in part, on our ability to invest in patented technologies, patent portfolios, or companies holding such patented technologies and patent portfolios. Accordingly, historically we have engaged in patent portfolio investments in an effort to expand our patent portfolio assets. Such investments and potential investments are subject to numerous risks, including the following:

- our inability to enter into a definitive agreement with respect to any potential patent portfolio investment, or if we are able to enter into such agreement, our inability to consummate the potential investment transaction;

- difficulty integrating the operations, technology and personnel of the acquired entity;
- our inability to achieve the anticipated financial and other benefits of the specific patent portfolio investment;
- our inability to retain key personnel from the acquired company, if necessary;
- difficulty in maintaining controls, procedures and policies during the transition and integration process;
- diversion of our management's attention from other business concerns; and
- failure of our due diligence process to identify significant issues, including issues with respect to patented technologies and patent portfolios, and other legal and financial contingencies.

If we are unable to manage these risks effectively as part of any patent portfolio investment, our business could be adversely affected.

Our revenues are unpredictable, and this may harm our financial condition .

Due to the nature of our licensing business and uncertainties regarding the amount and timing of the receipt of license and other fees from potential infringers, stemming primarily from uncertainties regarding the outcome of enforcement actions, rates of adoption of our patented technologies, the growth rates of our existing licensees and certain other factors, our revenues may vary significantly from quarter to quarter and period to period, which could make our business difficult to manage, adversely affect our business and operating results, cause our quarterly and periodic results to fall below market expectations and adversely affect the market price of our common stock.

Our operating subsidiaries depend upon relationships with others to provide technology-based opportunities that can develop into profitable royalty-bearing licenses, and if they are unable to maintain and generate new relationships, then they may not be able to sustain existing levels of revenue or increase revenue.

Neither we nor our operating subsidiaries invent new technologies or products; rather, we depend upon the identification and investment in patents, inventions and companies that own IP through our relationships with inventors, universities, research institutions, technology companies and others. If our operating subsidiaries are unable to maintain those relationships and identify and grow new relationships, then we may not be able to identify new technology-based patent opportunities for sustainable revenue and /or revenue growth.

Our current or future relationships may not provide the volume or quality of technologies necessary to sustain our licensing, enforcement and overall business. If we are unable to maintain current relationships and sources of technology or to secure new relationships and sources of technology, such inability may have a material adverse effect on our revenues, operating results, financial condition and ability to maintain our licensing and enforcement business.

The success of our operating subsidiaries depends in part upon their ability to retain the best legal counsel to represent them in patent enforcement litigation in order to achieve favorable outcomes from such litigation. The outcome of such litigation is uncertain, and any unfavorable outcomes may harm our financial condition.

The success of our licensing business depends upon our operating subsidiaries' ability to retain the best legal counsel to prosecute patent infringement litigation. As our operations evolve and industry conditions increase in complexity, it will become more difficult to find the best legal counsel to handle all of our cases. This is due in part to many of the best law firms having conflicts of interest that prevents their representation of our subsidiaries.

We spend a significant amount of our financial and management resources to pursue our current litigation matters. We believe that these litigation matters and others that we may in the future determine to pursue could continue for years and continue to consume significant financial and management resources. The counterparties to our litigation are sometimes large, well-financed companies with substantially greater resources than us. We cannot assure you that any of our current or future litigation matters will result in a favorable outcome for us. In addition, in part due to the appeals process and other legal processes, even if we obtain favorable interim rulings or verdicts in particular litigation matters, they may not be predictive of the ultimate resolution of the dispute. Also, we cannot assure you that we will not be exposed to claims or sanctions against us which may be costly or impossible for us to defend. The inability to retain the best legal counsel to represent our operating subsidiaries in infringement actions may result in unfavorable or adverse outcomes, which may result in losses, exhaustion of financial resources or other adverse effects which could encumber our ability to effectively operate our business or execute our business strategy.

Our operating subsidiaries, in certain circumstances, rely on representations, warranties and opinions made by third-parties that, if determined to be false or inaccurate, may expose us and our operating subsidiaries to certain material liabilities.

From time to time, our operating subsidiaries may rely upon representations and warranties made by third-parties from whom our operating subsidiaries acquired patents or the exclusive rights to license and enforce patents. We also may rely upon the opinions of purported experts. In certain instances, we may not have the opportunity to independently investigate and verify the facts upon which such representations, warranties, and opinions are made. By relying on these representations, warranties and opinions, our operating subsidiaries may be exposed to liabilities in connection with the licensing and enforcement of certain patents and patent rights which could have a material adverse effect on our operating results and financial condition.

In connection with patent enforcement actions conducted by certain of our subsidiaries, a court may rule that we or our subsidiaries have violated certain statutory, regulatory, federal, local or governing rules or standards, which may expose us and our operating subsidiaries to certain material liabilities.

In connection with any of our patent enforcement actions, it is possible that a defendant may request and/or a court may rule that we have violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against us or our operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material, and if we or our operating subsidiaries are required to pay such monetary sanctions, attorneys' fees and/or expenses, such payment could materially harm our operating results and our financial position.

In connection with patent enforcement actions conducted by certain of our subsidiaries, a court may find the patents invalid, not infringed or unenforceable and/or the U.S. Patent and Trademark Office, or the USPTO, or other relevant patent office, may either invalidate the patents or materially narrow the scope of their claims during the course of a reexamination, opposition or other such proceeding.

Patent litigation is inherently risky and the outcome is uncertain. Some of the parties that we believe infringe on our patents are large and well-financed companies with substantially greater resources than ours. We believe that these parties would devote a substantial amount of resources in an attempt to avoid or limit a finding that they are liable for infringing on our patents or, in the event liability is found, to avoid or limit the amount of associated damages. In addition, there is a risk that these parties may file inter-partes reviews, reexaminations or other proceedings with the USPTO or other government agencies in the United States or abroad in an attempt to invalidate, narrow the scope or render unenforceable the patents we own or control. If this were to occur, it may have a material adverse effect on our operations.

In addition, it is difficult to predict the outcome of patent enforcement litigation at any level. In the United States, there is a higher rate of appeals in patent enforcement litigation than standard business litigation. The defendant to any case we bring, may file as many appeals as allowed by right, including to the first, second and/or final courts of appeal (in the United States those courts would be the Federal Circuit and Supreme Court, respectively). Such appeals are expensive and time-consuming, and the outcomes of such appeals are sometimes unpredictable, resulting in increased costs and reduced or delayed revenue which could have a material adverse effect on our operating results and financial condition.

Our licensing cycle is lengthy and costly, and our legal and sales efforts may be unsuccessful.

We expect our operating subsidiaries to incur significant general and administrative and legal expenses prior to entering into license agreements and generating license revenues. We also spend considerable resources educating prospective licensees on the benefits of a license arrangement with us. As such, we may incur significant losses in any particular period before any associated revenue stream begins.

If our efforts to educate prospective licensees on the benefits of a license arrangement are unsuccessful, we may need to pursue litigation or other enforcement action to protect our patent rights. We may also need to litigate to enforce the terms of our existing license agreements, protect our trade secrets, or determine the validity and scope of the proprietary rights of others. Enforcement proceedings are typically protracted and complex. The costs are typically substantial, and the outcomes are unpredictable. Enforcement actions will divert our managerial, technical, legal and financial resources from business operations and there are no assurances that such enforcement actions will result in favorable results for us.

Failure to maintain effective internal control over our financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act could cause our financial reports to be inaccurate.

We are required pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, or Section 404, to maintain internal control over financial reporting and to assess and report on the effectiveness of those controls. This assessment includes disclosure of any material weaknesses identified by our management in our internal control over financial reporting.

Our management concluded that our internal control over financial reporting was effective as of December 31, 2019. However, there are inherent limitations on effectiveness of controls. Our management, including our Chief Executive Officer and Corporate Controller, does not expect that our disclosure controls or our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been detected. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of the effectiveness of controls to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

If we are not able to maintain effective internal control over financial reporting, our financial statements, including related disclosures, may be inaccurate, which could have a material adverse effect on our business. Refer to Item 9A. "Controls and Procedures" for additional information related to the current period.

Our equity investments are subject to risks and we may experience significant financial losses.

Our equity investments are subject to a high degree of risk and could diminish our financial condition. The overall sustained economic uncertainty, as well as financial, operational and other difficulties encountered by certain companies in which we have equity investments increases the risk that the actual amounts realized in the future on our debt and equity investments will differ significantly from the fair values currently assigned to them. In addition, the companies in which we have equity investments may not be able to compete effectively or there may be insufficient demand for the services and products offered by these companies. These investments could also expose us to significant financial losses and may limit alternative uses of our capital resources. If our investees suffer losses, our financial condition could be materially adversely affected. In addition, applicable securities law restrictions and other factors may result in an inability to liquidate any equity components of our equity investments.

Risks Related to Our Industry

Our exposure to uncontrollable outside influences, including new legislation, court rulings or actions by the USPTO, could adversely affect our licensing and enforcement business and results of operations.

Our licensing and enforcement business is subject to numerous risks from outside influences, including the following:

New legislation, regulations or rules related to obtaining patents or enforcing patents could significantly increase our operating costs and decrease our revenue.

Our operating subsidiaries invest in patents with enforcement opportunities and spend a significant amount of resources to enforce those patents. If new legislation, regulations or rules are implemented by Congress, the USPTO or the courts that impact the patent application process, the patent enforcement process or the rights of patent holders, such changes could negatively affect our business. United States patent laws were amended with the enactment of the Leahy-Smith America Invents Act, or the America Invents Act, which took effect on March 16, 2013. The America Invents Act includes a number of significant changes to U.S. patent law. In general, the legislation attempts to address issues surrounding the enforceability of patents and the increase in patent litigation by, among other things, establishing new procedures for patent litigation. For example, the America Invents Act changes the way that parties may be joined in patent infringement actions, increasing the likelihood that such actions will need to be brought against individual allegedly-infringing parties by their respective individual actions or activities. In addition, the America Invents Act enacted a new inter-partes review process, or IPR process, at the USPTO which can be, and often is, used by defendants, and other individuals and entities, to separately challenge the validity of any patent. The IPR process of the America Invents Act has in many instances increased costs for licensing and litigation and has resulted in the loss of certain portfolio patents which, in some cases, may have negatively impacted the value of those portfolios. The America Invents Act and its implementation has increased the uncertainties and costs surrounding the enforcement of our patented technologies, which in certain circumstances could have a material adverse effect on our business and financial condition.

Finally, new rules regarding the burden of proof in patent enforcement actions could significantly increase the cost of our enforcement actions, and new standards or limitations on liability for patent infringement could negatively impact our revenue derived from such enforcement actions. In addition, recent federal court decisions have lowered the threshold for obtaining attorneys' fees in patent infringement cases and increased the level of deference given to a district court's fee-shifting determination. These decisions may make it easier for district courts to shift a prevailing party's attorneys' fees to a non-prevailing party if the district court believes that the case was weak or conducted in an abusive manner. As a result, defendants in patent infringement actions brought by non-practicing entities may elect not to settle because these decisions make it much easier for defendants to get attorneys' fees.

Changes in patent law could adversely impact our business.

Patent laws may continue to change, and may alter the historically consistent protections afforded to owners of patent rights. Such changes may not be advantageous for us and may make it more difficult to obtain adequate patent protection to enforce our patents against infringing parties. Increased focus on the growing number of patent-related lawsuits may result in legislative changes which increase our costs and related risks of asserting patent enforcement actions. For instance, the United States Congress has considered a bill that would require, among other things, non-practicing entities that bring patent infringement lawsuits to pay legal costs of the defendants, if the lawsuits are unsuccessful and certain standards are not met.

Trial judges and juries often find it difficult to understand complex patent enforcement litigation, and as a result, we may need to appeal adverse decisions by lower courts in order to successfully enforce our patents.

It is difficult to predict the outcome of patent enforcement litigation at the trial level. It is often difficult for juries and trial judges to understand complex, patented technologies, and as a result, there is a higher rate of successful appeals in patent enforcement litigation than more standard business litigation. Such appeals are expensive and time consuming, resulting in increased costs and delayed revenue. Although we diligently pursue enforcement litigation, we cannot predict with significant reliability the decisions made by juries and trial courts.

More patent applications are filed each year resulting in longer delays in getting patents issued by the USPTO.

Certain of our operating subsidiaries hold and continue to invest in pending patents. We have identified a trend of increasing patent applications each year, which we believe is resulting in longer delays in obtaining approval of pending patent applications. The application delays could cause delays in recognizing revenue from these patents and could cause us to miss opportunities to license patents before other competing technologies are developed or introduced into the market.

Federal courts are becoming more crowded, and as a result, patent enforcement litigation is taking longer.

Our patent enforcement actions are almost exclusively prosecuted in federal court. Federal trial courts that hear our patent enforcement actions also hear criminal cases. Criminal cases always take priority over our actions. As a result, it is difficult to predict the length of time it will take to complete an enforcement action. Moreover, we believe there is a trend in increasing numbers of civil lawsuits and criminal proceedings before federal judges and, as a result, we believe that the risk of delays in our patent enforcement actions will have a greater negative effect on our business in the future unless this trend changes.

Any reductions in the funding of the USPTO could have an adverse impact on the cost of processing pending patent applications and the value of those pending patent applications.

The assets of our operating subsidiaries consist of patent portfolios, including pending patent applications before the USPTO. The value of our patent portfolios is dependent upon the issuance of patents in a timely manner, and any reductions in the funding of the USPTO could negatively impact the value of our assets. Further, reductions in funding from Congress could result in higher patent application filing and maintenance fees charged by the USPTO, causing an increase in our expenses.

Competition is intense in the industries in which our subsidiaries do business and as a result, we may not be able to grow or maintain our market share for our technologies and patents.

We expect to encounter competition in the area of patent portfolio investments and enforcement. This includes competitors seeking to invest in the same or similar patents and technologies that we may seek to invest in. As new technological advances occur, many of our patented technologies may become obsolete before they are completely monetized. If we are unable to replace obsolete technologies with more technologically advanced patented technologies, then this obsolescence could have a negative effect on our ability to generate future revenues.

Our licensing business also competes with venture capital firms and various industry leaders for patent licensing opportunities. Many of these competitors may have more financial and human resources than we do. As we become more successful, we may find more companies entering the market for similar technology opportunities, which may reduce our market share in one or more technology industries that we currently rely upon to generate future revenue.

Our patented technologies face uncertain market value.

Our operating subsidiaries have invested in patents and technologies that may be in the early stages of adoption in the commercial and consumer markets. Demand for some of these technologies is untested and is subject to fluctuation based upon the rate at which our licensees will adopt our patents and technologies in their products and services.

Further, significant judgment is required in connection with estimates of the recoverability of the carrying value of our intangible patent assets, including estimates of market values, estimates of the amount and timing of future cash flows, and estimates of other factors that are used to determine the fair value and recoverability of the respective patent asset values. Developments with respect to ongoing patent litigation, patent challenges and re-exams, legislative and judicial decisions and other factors outside of our control, may unfavorably impact the validity, applicability, and enforceability of our patent assets, and therefore, negatively impact the future value of our patent portfolios. If certain of these unfavorable events occur, our estimates or related projections may change materially in future periods, and future intangible asset impairment tests may result in material charges to earnings.

Patent litigation trials and scheduled trial dates are subject to routine delay, and any such delays could adversely impact our business, results of operations and financial condition.

Patent infringement trials are components of our overall patent licensing process and are one of many factors that contribute to the existence of possible future revenue opportunities for us. Patent litigation schedules in general, and in particular trial dates, are subject to routine adjustment, and in most cases delay, as courts adjust their calendars or respond to requests from one or more parties. Trial dates often are rescheduled by the court for various reasons that are often unrelated to the underlying patent assets and typically for reasons that are beyond our control. As a result, to the extent such events are an indicator of possible future revenue opportunities for us, or other outcome determinative events, they may and often do change which can result in delay of the expected scheduled event. Any such delay could be significant and could affect the corresponding future revenue opportunities, thus adversely impacting our business, results of operations and financial condition.

The markets served by our operating subsidiaries are subject to rapid technological change, and if our operating subsidiaries are unable to develop and invest in new technologies and patents, our ability to generate revenues could be substantially impaired.

The markets served by our operating subsidiaries and their licensees frequently undergo transitions in which products rapidly incorporate new features and performance standards on an industry-wide basis. Products for communications applications and high-speed computing applications, as well as other applications covered by our operating subsidiaries' IP, are based on continually evolving industry standards. In addition, the communications industry is intensely competitive and has been impacted by price erosion, rapid technological change, short product life cycles, cyclical market patterns and increasing foreign and domestic competition. Our ability to compete in the future will depend on our ability to identify and ensure compliance with evolving industry standards. This will require our continued efforts and success in acquiring new patent portfolios with licensing and enforcement opportunities. If we are unable to invest in new patented technologies and patent portfolios, or to identify and ensure compliance with evolving industry standards, our ability to generate revenues could be substantially impaired and our business and financial condition could be materially harmed.

Uncertainty in global economic conditions could negatively affect our business, results of operations and financial condition .

Our revenue-generating opportunities depend on the use of our patented technologies by existing and prospective licensees, the overall demand for the products and services of our licensees, and on the overall economic and financial health of our licensees. If economic conditions do not continue to improve, or if they deteriorate, many of our licensees' customers, which may rely on credit financing, may delay or reduce their purchases of our licensees' products and services. In addition, the use or adoption of our patented technologies is often based on current and forecasted demand for our licensees' products and services in the marketplace and may require companies to make significant initial commitments of capital and other resources. If negative conditions in the global credit markets delay or prevent our licensees' and their customers' access to credit, overall consumer spending on the products and services of our licensees may decrease and the adoption or use of our patented technologies may slow, respectively. Further, if the markets in which our licensees' participate do not continue to improve, or deteriorate further, this could negatively impact our licensees' long-term sales and revenue generation, margins and operating expenses, which could in turn have an adverse effect on our business, results of operations and financial condition.

Public health threats such as COVID-19 could have a material adverse effect on our operations, the operations of our business partners, and the global economy as a whole.

Public health threats and other highly communicable diseases, outbreaks of which have already occurred in various parts of the world, could adversely impact our operations, as well as the operations of our licensees and other business partners. For example, the outbreak in December 2019 of a novel coronavirus (COVID-19) has resulted in decreased economic activity in China, as well as a number of other countries, and the scope of the outbreak and its impacts is continuing to expand. We have taken precautions in the operation of our own business and maintain an up-to-date disaster recovery and business continuity policy as well as have the systems and support to have our workforce work remotely for an indefinite period of time. However, any further spread of the COVID-19 outbreak, or the occurrence of other similar outbreaks or epidemics, could have a material adverse effect on our business, operations and financial results.

Risks Related to Our Common Stock

The availability of shares for sale in the future could reduce the market price of our common stock .

In the future, we may issue securities to raise cash for operations and patent portfolio investments. We may also pay for interests in additional subsidiary companies by using shares of our common stock or a combination of cash and shares of our common stock. We may also issue securities convertible into our common stock. Any of these events may dilute stockholders' ownership interests in our company and have an adverse impact on the price of our common stock.

In addition, sales of a substantial amount of our common stock in the public market, or the perception that these sales may occur, could reduce the market price of our common stock. This could also impair our ability to raise additional capital through the sale of our securities.

Delaware law and our charter documents contain provisions that could discourage or prevent a potential takeover of our company that might otherwise result in our stockholders receiving a premium over the market price of their shares.

Provisions of Delaware law and our certificate of incorporation and bylaws could make the acquisition of our company by means of a tender offer, proxy contest or otherwise, and the removal of incumbent officers and directors, more difficult. These provisions include:

- Section 203 of the Delaware General Corporation Law, which prohibits a merger with a 15%-or-greater stockholder, such as a party that has completed a successful tender offer, until three years after that party became a 15%-or-greater stockholder;
- amendment of our bylaws by the stockholders requires a two-thirds approval of the outstanding shares;
- the authorization in our certificate of incorporation of undesignated preferred stock, which could be issued without stockholder approval in a manner designed to prevent or discourage a takeover; and
- the general restriction in our certificate of incorporation on any direct or indirect transfers of our common stock if the effect would be to (i) increase the direct or indirect ownership of our common stock by any person or group from less than 4.899% to 4.899% or more of our common stock; or (ii) increase the percentage of our common stock owned directly or indirectly by a person or group owning or deemed to own 4.899% or more of our common stock.

Together, these provisions may make the removal of management more difficult and may discourage transactions that could otherwise involve payment of a premium over prevailing market prices for our common stock.

Our Tax Benefits Preservation Plan could inhibit a change in our control that may otherwise be favorable to our stockholders.

In March 2019, our board of directors approved the adoption of a Tax Benefits Preservation Plan in order to protect our ability to utilize potential tax assets, such as net operating loss carryforwards and tax credits, to offset potential future taxable income by discouraging investors from acquiring ownership of our common stock in a manner that could trigger an "ownership change" for purposes of Section 382 of the Code. Our stockholders ratified the adoption of the Tax Benefits Preservation Plan in July 2019.

Under the terms of the Tax Benefits Preservation Plan, in general, if a person or group acquires beneficial ownership of 4.9% or more of the outstanding shares of our Common Stock without prior approval of our board of directors or without meeting certain exceptions, the rights would become exercisable and our stockholders (other than the acquiring person) will have the right to purchase securities from us at a discount to such securities' fair market value, thus causing substantial dilution to the acquiring person. As a result, the Tax Benefits Preservation Plan may have the effect of inhibiting or impeding a change in control not approved by our board of directors and, notwithstanding its purpose, could adversely affect our stockholders' ability to realize a premium over the then-prevailing market price for our common stock in connection with such a transaction. In addition, because our board of directors may consent to certain transactions, the Tax Benefits Preservation Plan gives our board of directors significant discretion over whether a potential acquirer's efforts to acquire a large interest in us will be successful. There can be no assurance that the Tax Benefits Preservation Plan will prevent an "ownership change" within the meaning of Section 382 of the Code, in which case we may lose all or most of the anticipated tax benefits associated with our prior losses.

We may fail to meet market expectations because of fluctuations in quarterly operating results, which could cause the price of our common stock to decline.

Our reported revenues and operating results have fluctuated in the past and may continue to fluctuate significantly from quarter to quarter in the future. It is possible that in future periods, revenues could fall below the expectations of securities analysts or investors, which could cause the market price of our common stock to decline. The following are among the factors that could cause our operating results to fluctuate significantly from period to period:

- the dollar amount of agreements executed in each period, which is primarily driven by the nature and characteristics of the technology being licensed and the magnitude of infringement associated with a specific licensee;
- the specific terms and conditions of agreements executed in each period and the periods of infringement contemplated by the respective payments;
- fluctuations in the total number of agreements executed;
- fluctuations in the sales results or other royalty-per-unit activities of our licensees that impact the calculation of license fees due;
- the timing of the receipt of periodic license fee payments and/or reports from licensees;
- fluctuations in the net number of active licensees period to period;
- costs related to investments, alliances, licenses and other efforts to expand our operations;
- the timing of payments under the terms of any customer or license agreements into which our operating subsidiaries may enter;
- we may elect to account for equity investments in companies where our investment gives us the ability to exercise significant influence over the operating and financial policies of the investee at fair value, which may result in significant fluctuations in operating results (unrealized gains and losses) each period based on fluctuations in the stock price of our investments and the requirement to mark such investments to market at each balance sheet date;
- expenses related to, and the timing and results of, patent filings and other enforcement proceedings relating to IP rights, as more fully described in this section; and
- new litigation or developments in current litigation and the unpredictability of litigation results or settlements or appeals.

Technology company stock prices are especially volatile, and this volatility may depress the price of our common stock .

The stock market has experienced significant price and volume fluctuations, and the market prices of technology companies have been highly volatile. We believe that various factors may cause the market price of our common stock to fluctuate, perhaps substantially, including, among others, the following:

- announcements of developments in our patent enforcement actions;
- developments or disputes concerning our patents;
- our or our competitors' technological innovations;
- developments in relationships with licensees;
- variations in our quarterly operating results;
- our failure to meet or exceed securities analysts' expectations of our financial results;

- a change in financial estimates or securities analysts' recommendations;
- changes in management's or securities analysts' estimates of our financial performance;
- changes in market valuations of similar companies;
- concerns about sovereign debt of the United States and the European Union;
- announcements by us or our competitors of significant contracts, investments, partnerships, joint ventures, capital commitments, new technologies, or patents; and
- failure to complete significant transactions.

For example, the NASDAQ-100 Technology Sector Index (NDXT) had a range of \$3,547.57 - \$5,492.35 during the 52 weeks ended December 31, 2019 and the NASDAQ Composite Index (IXIC) had a range of \$6,463.50- \$9,022.39 over the same period. Over the same period, our common stock fluctuated within a range of \$2.46 - \$3.29.

As noted above, our stock price, like many others, has fluctuated significantly in recent periods and if investors have concerns that our business, operating results and financial condition will be negatively impacted by industry, global economic or other negative conditions, our stock price could continue to fluctuate significantly in future periods.

In addition, we believe that fluctuations in our stock price during applicable periods can also be impacted by court rulings and/or other developments in our patent licensing and enforcement actions. Court rulings in patent enforcement actions are often difficult to understand, even when favorable or neutral to the value of our patents and our overall business, and we believe that investors in the market may overreact, causing fluctuations in our stock prices that may not accurately reflect the impact of court rulings on our business operations and assets.

In the past, companies that have experienced volatility in the market price of their stock have been the objects of securities class action litigation. If our common stock was the object of securities class action litigation, it could result in substantial costs and a diversion of management's attention and resources, which could materially harm our business and financial results.

We do not currently intend to pay dividends on our common stock in the foreseeable future, and consequently, your ability to achieve a return on your investment will depend on appreciation in the price of our common stock.

On February 23, 2016, our board of directors eliminated our dividend policy that provided for the discretionary payment of a total annual cash dividend of \$0.50 per share to holders of our common stock, payable in the amount of \$0.125 per share per quarter, effective as of February 23, 2016. As a result, we do not anticipate paying any cash dividends to holders of our common stock in the foreseeable future. Consequently, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

The issuance of the Starboard Securities to Starboard and its permitted transferees dilutes the ownership and relative voting power of holders of our common stock and may adversely affect the market price of our common stock.

Pursuant to the Securities Purchase Agreement, the Company sold to Starboard (i) 350,000 shares of our newly designated Series A Preferred Stock and Series A Warrants to purchase up to 5,000,000 shares of common stock in 2019, and (ii) Series B Warrants to purchase up to 100,000,000 shares of common stock in 2020.

As of December 31, 2019, the Series A Preferred Stock held by Starboard represents approximately 16% of our outstanding common stock on an as-converted. Because holders of our Series A Preferred Stock are entitled to vote, on an as-converted basis, together with holders of our common stock on all matters submitted to a vote of the holders of our common stock, the issuance of the Series A Preferred Stock to Starboard effectively reduces the relative voting power of the holders of our common stock.

In addition, the conversion and/or exercise of the Starboard Securities into common stock would dilute the ownership interest of existing holders of our common stock. Furthermore, any sales in the public market of the common stock issuable upon conversion or exercise of the Starboard Securities could adversely affect prevailing market prices of our common stock. Pursuant to a customary Registration Rights Agreement with Starboard, we have agreed to provide certain registration rights with respect to the Starboard Securities and the shares of common stock issued upon the conversion or exercise of the Starboard Securities, as applicable. Any such registration may facilitate the resale of such securities into the public market, and any such resale would increase the number of shares of our common stock available for public trading. Sales by Starboard of a substantial number of shares of our common stock in the public market, or the perception that such sales might occur, could have a material adverse effect on the price of our common stock.

Our Series A Preferred Stock has rights, preferences and privileges that are not held by, and are preferential to, the rights of, our common stockholders, which could adversely affect our liquidity and financial condition, result in the interests of holders of our Series A Preferred Stock differing from those of our common stockholders and delay or prevent an attempt to take over the Company.

Starboard and the other holders of our Series A Preferred Stock have a liquidation preference entitling them to be paid, before any payment may be made to holders of our common stock in connection with a liquidation event, an amount per share of Series A Preferred Stock equal to the greater of (i) the stated value thereof plus accrued and unpaid dividends, and (ii) the amount that would have been received had such share of Series A Preferred Stock been converted into common stock immediately prior to such liquidation event.

Holders of Series A Preferred Stock are entitled to a preferential cumulative dividend at the rate of 3.0% per annum, payable quarterly in arrears. Upon the consummation of a suitable investment or acquisition by the Company, such investment to be identified and approved by each of the Company and Starboard, the dividend rate will increase to 8.0% per annum.

The holders of our Series A Preferred Stock also have certain redemption rights, including the right to require us to repurchase all or any portion of the Series A Preferred Stock during certain specified periods and subject to certain conditions set forth in the Certificate of Designations, Preferences, and Rights of Series A Convertible Preferred Stock, or the Certificate of Designations. Holders of the Series A Preferred Stock also have the right, subject to certain exceptions, to require us to repurchase all or any portion of the Series A Preferred Stock upon certain change of control events.

These dividend and share repurchase obligations could impact our liquidity and reduce the amount of cash flows available for working capital, capital expenditures, growth opportunities, acquisitions, and other general corporate purposes. The preferential rights could also result in divergent interests between Starboard and holders of our common stock. Furthermore, a sale of our Company, as a change of control event, may require us to repurchase Series A Preferred Stock, which could have the effect of making an acquisition of the Company more expensive and potentially deterring proposed transactions that may otherwise be beneficial to our stockholders.

Starboard has certain rights, including the ability to designate up to three members of our board of directors.

The transaction documents entered into in connection with the Starboard Investment grant to Starboard consent rights with respect to certain actions by us, including:

- amending our organizational documents in a manner that would have an adverse effect on the Series A Preferred Stock; and
- increasing the maximum number of directors on our board to more than seven persons, subject to the terms of the Governance Agreement entered into in connection with the Securities Purchase Agreement, or the Governance Agreement.

The Securities Purchase Agreement also imposes a number of affirmative and negative covenants on us.

In addition, the terms of the Governance Agreement grant Starboard certain rights to designate directors to be nominated for election by holders of our common stock. For so long as certain criteria set forth in the Governance Agreement are satisfied, including that Starboard beneficially own, in the aggregate, at least 4.0% of the Company's then-outstanding common stock (on an as-converted basis, if applicable), Starboard has the right to designate up to three directors for election to our Board.

The directors designated by Starboard also are entitled to serve on committees of our Board, subject to applicable law and stock exchange rules.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Our principal executive, corporate and administrative offices are located in Irvine, California, where we lease approximately 8,293 square feet of office space, under a lease agreement that expires in 2024. Our primary operating subsidiary, Acacia Research Group, LLC, and its subsidiaries, are headquartered in Frisco, Texas, where we lease office space under a lease agreement that expires in 2020. We believe that our facilities are adequate, suitable and of sufficient capacity to support our immediate needs.

ITEM 3. LEGAL PROCEEDINGS

In the ordinary course of business, we are the subject of, or party to, various pending or threatened legal actions, including various counterclaims in connection with our patent enforcement activities. We believe that any liability arising from these actions will not have a material adverse effect on our consolidated financial position, results of operations or cash flows.

Our operating subsidiaries are often required to engage in litigation to enforce their patents and patent rights. Certain of our operating subsidiaries are parties to ongoing patent enforcement related litigation, alleging infringement by third-parties of certain of the patented technologies owned or controlled by our operating subsidiaries.

In connection with any of our patent enforcement actions, it is possible that a defendant may claim and/or a court may rule that we have violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against us or our operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material, and if required to be paid by us or our operating subsidiaries, could materially harm our operating results and our financial position.

We spend a significant amount of our financial and management resources to pursue our current litigation matters. We believe that these litigation matters and others that we may in the future determine to pursue could continue for years and continue to consume significant financial and management resources. The counterparties to our litigation are sometimes large, well-financed companies with substantially greater resources than us. We cannot assure you that any of our current or future litigation matters will result in a favorable outcome for us. In addition, in part due to the appeals process and other legal processes, even if we obtain favorable interim rulings or verdicts in particular litigation matters, they may not be predictive of the ultimate resolution of the dispute. Also, we cannot assure you that we will not be exposed to claims or sanctions against us which may be costly or impossible for us to defend. Unfavorable or adverse outcomes may result in losses, exhaustion of financial resources or other adverse effects which could encumber our ability to effectively and efficiently monetize our assets.

On June 17, 2015, Celltrace Communications Ltd., or Celltrace, filed a lawsuit against Acacia in U.S. District Court for the Southern District of New York, Case No. 1:15-cv-04746, alleging, among other things, significant damages for alleged breach of contract, unjust enrichment and fraud. Acacia disputes the allegations and does not believe that Celltrace is entitled to any damages. Acacia successfully moved to compel arbitration of the dispute, and the District Court stayed the litigation pending arbitration before the International Court of Arbitration for the International Chamber of Commerce, or the ICC. Celltrace appealed the decision to the U.S. Court of Appeals for the Second Circuit, which denied the appeal. Celltrace filed its request for arbitration of the claims with the ICC on November 28, 2016. Acacia filed an answer denying all allegations of wrongdoing and asserting affirmative defenses. A tribunal was appointed to preside over the arbitration and conducted its first case management conference on June 26, 2017. The parties conducted discovery and submitted their cases in chief to the tribunal in a series of written submissions per the tribunal's orders between January 2018 and December 2018. The tribunal held an evidentiary hearing with live witness testimony in New York City between February 4, 2019 and February 13, 2019. At the end of the hearing, the tribunal set a schedule for post-hearing briefing by the parties, which concluded in April 2019. We are now waiting for the tribunal to issue its decision. Acacia continues to vigorously contest all allegations of wrongdoing.

ITEM 4. MINE SAFETY DISCLOSURES

None.

PART II

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

General

Our common stock trades on The NASDAQ Global Select Market under the symbol "ACTG."

Dividend Policy

On April 23, 2013, we announced that our board of directors approved the adoption of a cash dividend policy that called for the payment of an expected total annual cash dividend of \$0.50 per share to holders of our common stock, payable in the amount of \$0.125 per share per quarter. On February 23, 2016, our board of directors terminated the company's dividend policy due to a number of factors, including our financial performance, our available cash resources, our cash requirements and alternative uses of capital that our board of directors concluded would represent an opportunity to generate a greater return on investment for us and our stockholders.

The current policy of our board of directors is to retain earnings, if any, to provide for our growth. Consequently, we do not expect to pay any cash dividends in the foreseeable future. Further, there can be no assurance that our proposed operations will generate revenues and cash flow needed to declare any future cash dividends or that we will have legally available funds to pay future dividends.

Recent Sales of Unregistered Securities

None.

Stock Repurchase Program

In February 2018, our board of directors authorized a stock repurchase program, or the Program, to repurchase up to \$20 million of our outstanding common stock in open market purchases or private purchases, from time to time, in amounts and at prices to be determined by the board of directors at its discretion. In determining whether or not to repurchase any shares of our common stock, our board of directors will consider such factors as the impact of the repurchase on our cash position, as well as our capital needs and whether there is a better alternative use of our capital. In fiscal year 2018, we repurchased 1,190,420 shares of common stock at an average price of \$3.89 for \$4,634,000. All of these shares were repurchased during the second quarter of fiscal year 2018. The Program expired on February 28, 2019.

On August 5, 2019, Acacia's board of directors approved a new stock repurchase program, which authorized the purchase of up to \$10.0 million of the Company's common stock through open market purchases, through block trades, through 10b5-1 plans, or by means of private purchases, from time to time, through July 31, 2020. No repurchases of shares of the Company's common stock occurred during the three months ended December 31, 2019.

Holders of Common Stock

On March 11, 2020, there were approximately 67 owners of record of our common stock. The majority of the outstanding shares of our common stock are held by a nominee holder on behalf of an indeterminable number of ultimate beneficial owners.

ITEM 6. SELECTED FINANCIAL DATA

Not required for "smaller reporting companies."

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

The following discussion should be read in conjunction with our consolidated financial statements included elsewhere in this annual report. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors including the risks we discuss in Item 1A, "Risk Factors," and elsewhere herein.

General

We invest in IP and related absolute return assets and engage in the licensing and enforcement of patented technologies. We partner with inventors and patent owners, applying our legal and technology expertise to patent assets to unlock the financial value in their patented inventions. We generate revenues and related cash flows from the granting of patent rights for the use of patented technologies that our operating subsidiaries control or own. We assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, where necessary, with the enforcement against unauthorized users of their patented technologies through the filing of patent infringement litigation. We are principals in the licensing and enforcement effort, obtaining control of the rights in the patent portfolio, or control of the patent portfolio outright.

We have a proven track record of licensing and enforcement success with over 1,570 license agreements executed to date, across nearly 200 patent portfolio licensing and enforcement programs. Currently, on a consolidated basis, our operating subsidiaries own or control the rights to multiple patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a variety of industries. To date, we have generated gross licensing revenue of approximately \$1.6 billion, and have returned more than \$776 million to our patent partners.

Our business is described more fully in Item 1. "Business," of this annual report.

Executive Overview

For the years ended December 31, 2019 and 2018, we reported revenues of \$11.2 million and \$131.5 million. Cash and trading securities totaled \$168.3 million as of December 31, 2019, as compared to \$165.5 million as of December 31, 2018. Our operating activities during the periods presented were focused on the continued operation of our patent licensing and enforcement business, including the continued pursuit of our ongoing patent licensing and enforcement programs. During 2019 and 2018, we also focused on cost reduction and optimization efforts, including renegotiation of certain existing arrangements, and reducing facilities costs.

Our team's expertise in identifying and evaluating complex IP, and in developing and cultivating long-term business relationships, provides us a unique window into innovation and technological advancement. We are increasing our efforts to leverage our expertise and experience to create new avenues and monetize our existing IP assets, which we believe will lead to increased stockholder value. We will leverage our experience, expertise, data and relationships developed as a leader in the IP industry to pursue these opportunities.

Patent Licensing and Enforcement

Patent Litigation Trial Dates and Related Trials. As of the date of this report, our operating subsidiaries have three pending patent infringement cases with a scheduled trial date in the next twelve months. Patent infringement trials are components of our overall patent licensing process and are one of many factors that contribute to possible future revenue generating opportunities for us. Scheduled trial dates, as promulgated by the respective court, merely provide an indication of when, in future periods, the trials may occur according to the court's scheduling calendar at a specific point in time. A court may change previously scheduled trial dates. In fact, courts often reschedule trial dates for various reasons that are unrelated to the underlying patent assets and typically for reasons that are beyond our control. While scheduled trial dates provide an indication of the timing of possible future revenue generating opportunities for us, the trials themselves and the immediately preceding periods represent the possible future revenue generating opportunities. These future opportunities can result in varying outcomes. In fact, it is difficult to predict the outcome of patent enforcement litigation at the trial level and outcomes can be unfavorable. It can be difficult to understand complex patented technologies, and as a result, this may lead to a higher rate of unfavorable litigation outcomes. Moreover, in the event of a favorable outcome, there is, in our experience, a higher rate of successful appeals in patent enforcement litigation than more standard business litigation. Such appeals are expensive and time consuming, resulting in increased costs and a potential for delayed or foregone revenue opportunities in the event of modification or reversal of favorable outcomes. Although we diligently pursue enforcement litigation, we cannot predict with reliability the decisions made by juries and trial courts. Please refer to Item 1A. "Risk Factors" for additional information regarding trials, patent litigation and related risks.

Litigation and Licensing Expense. We expect patent-related legal expenses to continue to fluctuate from period to period based on the factors summarized herein, in connection with future trial dates, international enforcement, strategic patent portfolio prosecution and our current and future patent portfolio investment, prosecution, licensing and enforcement activities. The pursuit of enforcement actions in connection with our licensing and enforcement programs can involve certain risks and uncertainties, including the following:

- Increases in patent-related legal expenses associated with patent infringement litigation, including, but not limited to, increases in costs billed by outside legal counsel for discovery, depositions, economic analyses, damages assessments, expert witnesses and other consultants, re-exam and inter partes review costs, case-related audio/video presentations and other litigation support and administrative costs could increase our operating costs and decrease our profit generating opportunities;
- Our patented technologies and enforcement actions are complex and, as a result, we may be required to appeal adverse decisions by trial courts in order to successfully enforce our patents. Moreover, such appeals may not be successful;
- New legislation, regulations or rules related to enforcement actions, including any fee or cost shifting provisions, could significantly increase our operating costs and decrease our profit generating opportunities. Increased focus on the growing number of patent-related lawsuits may result in legislative changes which increase our costs and related risks of asserting patent enforcement actions;
- Courts may rule that our subsidiaries have violated certain statutory, regulatory, federal, local or governing rules or standards by pursuing such enforcement actions, which may expose us and our operating subsidiaries to material liabilities, which could harm our operating results and our financial position;
- The complexity of negotiations and potential magnitude of exposure for potential infringers associated with higher quality patent portfolios may lead to increased intervals of time between the filing of litigation and potential revenue events (i.e., markman dates, trial dates), which may lead to increased legal expenses, consistent with the higher revenue potential of such portfolios; and
- Fluctuations in overall patent portfolio related enforcement activities which are impacted by the portfolio intake challenges discussed above could harm our operating results and our financial position.

Enforcement Activities. As previously reported, in March 2017, our subsidiary, Saint Lawrence Communications, LLC, or Saint Lawrence, received a jury verdict in its case against Motorola, Inc. in the United States District Court for the Eastern District of Texas, or District Court. The jury returned a verdict that five U.S. patents were valid and infringed. The jury found that the infringement was willful and returned a damages award of nearly \$9.2 million for past infringement. In addition, our German subsidiary, Saint Lawrence Communications GmbH, was granted injunctions by the German court in enforcement proceedings against Motorola, Inc. In the fourth quarter of 2018, Saint Lawrence and Saint Lawrence Communications GmbH entered into an agreement with Motorola, Inc. to resolve the patent litigation.

During the second quarter of 2017, Saint Lawrence resolved its enforcement actions against ZTE including the U.S. lawsuit. In February 2018, Saint Lawrence and Saint Lawrence Communications GmbH entered into an agreement with Apple Inc. to resolve all outstanding litigation.

As previously reported, in September 2016, our subsidiary Cellular Communications Equipment LLC, or CCE, received a jury verdict of infringement by Apple, Inc. In the third quarter of 2017, CCE entered into an agreement with Apple Inc. to resolve the patent litigation.

Investments in Patent Portfolios

One of the significant challenges in our industry continues to be quality patent intake due to the challenges and complexity associated with the current patent environment. In fiscal year 2019 we acquired five patent portfolios, compared to none during fiscal year 2018.

With respect to our licensing, enforcement and overall business, neither we nor our operating subsidiaries invent new technologies or products; rather, we depend upon the identification and investment in patents, inventions and companies that own IP through our relationships with inventors, universities, research institutions, technology companies and others. If our operating subsidiaries are unable to maintain those relationships and identify and grow new relationships, then we may not be able to identify new technology-based patent opportunities for sustainable revenue and /or revenue growth.

Our current or future relationships may not provide the volume or quality of technologies necessary to sustain our licensing, enforcement and overall business. In some cases, universities and other technology sources compete against us as they seek to develop and commercialize technologies. Universities may receive financing for basic research in exchange for the exclusive right to commercialize resulting inventions. These and other strategies employed by potential partners may reduce the number of technology sources and potential clients to whom we can market our solutions. If we are unable to maintain current relationships and sources of technology or to secure new relationships and sources of technology, such inability may have a material adverse effect on our revenues, operating results, financial condition and ability to maintain our licensing and enforcement business.

Patent Portfolio Intake. One of the significant challenges in our industry continues to be quality patent intake due to the challenges and complexity associated with the current patent environment. In fiscal year 2019, we acquired five new patent portfolios covering (i) enterprise networking equipment and residential gateways technology, (ii) customization of ad insertion for Internet radio streaming technology, (iii) wireless communications and cloud computing, (iv) optical communications, and (v) commercial food processing. The patents and patent rights acquired in 2019 have estimated economic useful lives of approximately five years. In fiscal year 2018 we did not acquire any patent portfolios.

Recent Business Matters

In 2019, as part of its strategy to grow the Company began evaluating a wide range of strategic opportunities that culminated in the strategic investment in the Company by Starboard. On November 18, 2019, the Company entered into the Securities Purchase Agreement with Starboard pursuant to which Starboard purchased (i) 350,000 shares of Series A Preferred Stock at an aggregate purchase price of \$35,000,000, and Series A Warrants to purchase up to 5,000,000 shares of the Company's common stock. The Securities Purchase Agreements also established the terms of certain senior secured notes and the Series B Warrants, which may be issued to Starboard in the future. Refer to Notes 16, 17 and 19 to our notes to consolidated financial statements for more information related to the Starboard Securities. In connection with Starboard's investment, Starboard was granted certain corporate governance rights, including the right to appoint Jonathan Sagal, Managing Director of Starboard, as a director of the Company and recommend two additional directors for appointment to our board of directors.

Operating Activities.

Our revenues historically have fluctuated period to period, and can vary significantly, based on a number of factors including the following:

- the dollar amount of agreements executed each period, which can be driven by the nature and characteristics of the technology or technologies being licensed and the magnitude of infringement associated with a specific licensee;
- the specific terms and conditions of agreements executed each period including the nature and characteristics of rights granted, and the periods of infringement or term of use contemplated by the respective payments;
- fluctuations in the total number of agreements executed each period;
- the number of, timing, results and uncertainties associated with patent licensing negotiations, mediations, patent infringement actions, trial dates and other enforcement proceedings relating to our patent licensing and enforcement programs;
- the relative maturity of licensing programs during the applicable periods;
- other external factors, including the periodic status or results of ongoing negotiations, the status or results of ongoing litigations and appeals, actual or perceived shifts in the regulatory environment, impact of unrelated patent related judicial proceedings and other macroeconomic factors;
- the willingness of prospective licensees to settle significant patent infringement cases and pay reasonable license fees for the use of our patented technology, as such infringement cases approached a court determined trial date; and
- fluctuations in overall patent portfolio related enforcement activities which are impacted by the portfolio intake challenges discussed above.

Our management does not attempt to manage for smooth sequential periodic growth in revenues period to period, and therefore, periodic results can be uneven. Unlike most operating businesses and industries, licensing revenues not generated in a current period are not necessarily foregone but, depending on whether negotiations, litigation or both continue into subsequent periods, and depending on a number of other factors, such potential revenues may be pushed into subsequent fiscal periods.

Revenues for the periods presented included fees from the following licensing and enforcement programs:

- | | |
|--|--|
| • Bone Wedge technology ⁽¹⁾⁽²⁾ | • Semiconductor and Memory-Related technology ⁽¹⁾ |
| • Cardiology and Vascular Device technology ⁽²⁾ | • Speech codecs used in wireless and wireline systems technology ⁽¹⁾⁽²⁾ |
| • MIPI DSI technology ⁽¹⁾ | • Super Resolutions Microscopy technology ⁽¹⁾⁽²⁾ |
| • Online Auction Guarantee technology ⁽²⁾ | • Video Conferencing technology ⁽¹⁾⁽²⁾ |
| • Semiconductor Testing technology ⁽²⁾ | • Wireless Infrastructure and User Equipment technology ⁽²⁾ |

⁽¹⁾ Licensing and enforcement program generating revenue in fiscal year 2019.

⁽²⁾ Licensing and enforcement program generating revenue in fiscal year 2018.

Revenues from one or more of our patents or patent portfolios may be significant in a specific reporting period, and may be significant to our licensing and enforcement business as a whole.

Summary of Results of Operations - For Fiscal Years 2019 and 2018

	2019	2018	\$ Change	% Change
	(In thousands, except percentage change values)			
Revenues	\$ 11,246	\$ 131,506	\$ (120,260)	(91%)
Operating costs and expenses	34,664	156,195	(121,531)	(78%)
Operating loss	(23,418)	(24,689)	1,271	(5%)
Other income (expense), net	4,465	(78,980)	83,445	(106%)
Loss before income taxes	(18,953)	(103,669)	84,716	(82%)
Income tax (expense) benefit	1,824	(1,179)	3,003	(255%)
Net loss attributable to Acacia Research Corporation	(17,115)	(105,029)	87,914	(84%)

Overview - Fiscal Year 2019 compared with Fiscal Year 2018

- Revenues decreased \$120.3 million, or 91% to \$11.2 million, primarily due to decrease in number of and in revenues from the new agreements executed during the year. Refer to "Investments in Patent Portfolios" below for additional information regarding the impact of portfolio acquisition trends on current and future licensing and enforcement related revenues.
- Loss before provision for income taxes was \$19.0 million for fiscal year 2019, as compared to \$103.7 million for fiscal year 2018. The net change was primarily comprised of the change in revenues described above and other changes in operating expenses and other income and expenses as follows:
 - Inventor royalties and contingent legal fees, on a combined basis, decreased \$61.1 million, or 92%, to \$5.5 million, primarily due to decrease in revenues as describe above.
 - Litigation and licensing expenses-patents decreased \$1.1 million, or 12%, to \$7.8 million, due primarily to a net decrease in litigation support and third-party technical consulting expenses associated with ongoing litigation.
 - Amortization expense decreased \$23.9 million, or 88%, to \$3.2 million, due to a decrease in scheduled amortization resulting from the \$28.2 million patent portfolio impairment charges previously recorded in the second quarter of 2018, and accelerated amortization recorded in the third quarter of 2018.

- Impairment of patent-related intangible asset charges decreased \$28.2 million. Impairment charges reflect the impact of reductions in expected estimated future net cash flows for certain patent portfolios and/or the impairment of certain portfolios that management determined it would no longer allocate resources to in future periods.
- General and administrative expenses, excluding non-cash stock compensation, decreased \$3.7 million, or 20%, to \$15.3 million, primarily due to higher corporate, general and administrative costs related to the 2018 proxy contest and employee related severance costs in the prior year.
- General and administrative non-cash stock compensation expense increased \$1.4 million, primarily due to a \$2.5 million reduction in non-cash stock compensation expense related to profits interests in 2018, offset by new restricted stock awards granted to our employees and board of directors in 2019, and certain restricted stock units granted in September 2019.
- Impairment of other investment increased from \$1.0 million to \$8.2 million due to impairment of our investment in Miso Robotics in the second quarter of 2019. Gain on disposal of other investment increased from \$0 to \$2.0 million due to the sale of our other investment in Miso Robotics in the third quarter of 2019. Refer to Note 6 to the consolidated financial statements elsewhere herein for additional information regarding our investment in Miso Robotics.
- Tax expense or benefits for fiscal years 2019 and 2018 primarily reflects the impact of state taxes and foreign withholding or refund incurred on revenue agreements executed with third-party licensees domiciled in foreign jurisdictions.

Revenues and Pretax Net Loss

Operating activities during the periods presented included the following:

	<u>2019</u>	<u>2018</u>
Revenues (in thousands)	\$ 11,246	\$ 131,506
New agreements executed	7	12
Licensing and enforcement programs generating revenues	6	8
New patent portfolios	5	—
Year-end cash, cash equivalents and trading securities (in thousands)	\$ 168,342	\$ 165,463

For the periods presented herein, the majority of the revenue agreements executed provided for the payment of one-time, paid-up license fees in consideration for the grant of certain IP rights for patented technology rights owned by our operating subsidiaries. These rights were primarily granted on a perpetual basis, extending until the expiration of the underlying patents.

Refer to Note 2 to the consolidated financial statements elsewhere herein for additional information regarding our revenue concentrations for the periods presented herein.

Refer to "Investments in Patent Portfolios" above for information regarding the impact of portfolio acquisition trends on current and future licensing and enforcement related revenues.

	<u>2019</u>	<u>2018</u>	<u>Change</u>	
			<u>\$ Change</u>	<u>% Change</u>
	(In thousands, except percentage change values)			
Loss before provision for income taxes	\$ (18,953)	\$ (103,669)	\$ 84,716	(82%)

Cost of Revenues

Inventor Royalties, Contingent Legal Fees Expense and Other Patent Acquisition Costs. The economic terms of patent portfolio related partnering agreements and contingent legal fee arrangements, if any, including royalty obligations, if any, royalty rates, contingent fee rates and other terms and conditions, vary across the patent portfolios owned or controlled by our operating subsidiaries. In certain instances, we have invested in certain patent portfolios without future inventor royalty obligations. These costs fluctuate period to period, based on the amount of revenues recognized each period, the terms and conditions of revenue agreements executed each period and the mix of specific patent portfolios with varying economic terms, conditions and obligations generating revenues each period.

	2019	2018	Change	
			\$ Change	% Change
(In thousands, except percentage change values)				
Inventor royalties	\$ 4,944	\$ 35,168	\$ (30,224)	(86%)
Contingent legal fees	591	31,501	(30,910)	(98%)
Patent acquisition expenses	–	4,000	(4,000)	(100%)

Litigation and Licensing Expenses - Patents. Litigation and licensing expenses-patents include patent-related litigation, enforcement and prosecution costs incurred by external patent attorneys engaged on an hourly basis and the out-of-pocket expenses incurred by law firms engaged on a contingent fee basis. Litigation and licensing expenses-patents also includes third-party patent research, development, prosecution, re-exam and inter partes reviews, consulting, and other costs incurred in connection with the licensing and enforcement of patent portfolios.

Litigation and licensing expenses-patents decreased for the periods presented due to a net decrease in litigation support, patent prosecution and litigation expenses associated with ongoing licensing and enforcement programs and an overall decrease in portfolio related enforcement activities. We expect patent-related legal expenses to continue to decrease based upon the overall decrease in portfolio related enforcement activities as we continue monetizing our existing patent assets. Refer to “*Investments in Patent Portfolios*” above for additional information regarding the impact of portfolio acquisition trends on licensing and enforcement activities and current and future licensing and enforcement related revenues.

Amortization of Patents. For the year ended December 31, 2019, amortization expense decreased \$23.9 million, or 88%, as compared to the year ended December 31, 2018. These decreases were due to a decrease in scheduled amortization resulting from the \$28.2 million patent portfolio impairment charges previously recorded in the fiscal 2018, and accelerated amortization recorded in the third quarter of 2018.

Impairment Charges. Impairment charges for fiscal year 2018 primarily reflect reductions in expected estimated future net cash flows for certain patent portfolios to which management determined it would no longer allocate resources in future periods. Impairment charges consisted of the excess of the asset’s carrying value over its estimated fair value as of the applicable measurement date.

	2019	2018	Change	
			\$ Change	% Change
(In thousands, except percentage change values)				
Litigation and licensing expenses - patents	\$ 7,803	\$ 8,866	\$ (1,063)	(12%)
Amortization of patents	3,194	27,120	(23,926)	(88%)
Impairment of patent-related intangible assets	–	28,210	(28,210)	(100%)

Operating Expenses

			Change	
	2019	2018	\$	%
(In thousands, except percentage change values)				
General and administrative expenses	\$ 15,301	\$ 19,045	\$ (3,744)	(20%)
Non-cash stock compensation expense - G&A	1,075	2,133	(1,058)	(50%)
Non-cash stock compensation expense - Profits Interests	–	(2,450)	2,450	(100%)
Total general and administrative expenses	<u>\$ 16,376</u>	<u>\$ 18,728</u>	<u>\$ (2,352)</u>	<u>(13%)</u>

General and Administrative Expenses. General and administrative expenses include employee compensation and related personnel costs, including variable performance based compensation and non-cash stock compensation expenses, office and facilities costs, legal and accounting professional fees, public relations, marketing, stock administration, business development, state taxes based on gross receipts and other corporate costs. A summary of the main drivers of the change in general and administrative expenses for the periods presented is as follows:

	2019 vs. 2018
	(In thousands)
Personnel costs and board fees	\$ (766)
Variable performance-based compensation costs	(373)
Corporate, general and administrative costs	(734)
Non-cash stock compensation expense ⁽¹⁾	1,393
Employee severance costs	(1,872)
Total change in general and administrative expenses	<u>\$ (2,352)</u>

(1) - Refer to Note 9 in the accompany consolidated financial statements

Profits interests are classified as liability awards, which are measured at fair value on the grant date and re-measured each reporting period at fair value until the award is settled. Compensation expense (included in “non-cash stock compensation expense - profits interests” above) is adjusted each reporting period for increases or decreases in the estimated fair value, which is primarily impacted by changes in the fair value of the underlying Veritone warrants related to the liability. Upon vesting of the units, which occurred in September 2017, any previously unrecognized compensation expense was immediately recognized for any changes in fair value. The fair value of the Veritone related profits interests Units totaled \$591,000 as of December 31, 2019 and December 31, 2018. Refer to Note 9 in the consolidated financial statements elsewhere herein for additional information.

Other. Fiscal year 2019 and 2018 operating expenses included expenses for court ordered attorney fees and settlement and contingency accruals totaling \$1.8 million and \$2.6 million, respectively.

Other Income (Expense)

Change in Fair Value of Investment, net. Our equity investment in Veritone is recorded at fair value, and therefore, is marked to market at each balance sheet date. Results for fiscal year 2019 included a net unrealized gain on our equity investment in Veritone totaling \$9.9 million and a realized loss of \$9.2 million on the sale of 1,121,071 shares of Veritone common stock at a weighted average price of \$5.91. Results for fiscal year 2018 included a net unrealized loss on our equity investment in Veritone totaling \$59.1 million and a realized loss of \$19.1 million on the sale of 2,700,000 shares of Veritone common stock at a weighted average price of \$7.07.

Income Taxes

	<u>2019</u>	<u>2018</u>
Income tax benefit (expense) (in thousands)	\$ 1,824	\$ (1,179)
Effective tax rate	(10)%	1%

Our effective tax rates for fiscal year 2019 and 2018, were primarily comprised of foreign taxes withheld and refunded on revenue agreements with licensees in foreign jurisdictions, state taxes, and the impact of full valuation allowances recorded for net operating loss (2019 and 2018) and foreign tax credit related tax assets generated in those periods due to uncertainty regarding future realization. Foreign taxes withheld and refunded related to revenue agreements executed with third-party licensees domiciled in certain foreign jurisdictions for fiscal year 2019 and 2018 totaled (\$1.9) million and \$1.1 million, respectively.

Inflation

Inflation has not had a significant impact on us or any of our subsidiaries in the current or prior periods.

Liquidity and Capital Resources

General

Our primary sources of liquidity are cash and cash equivalents on hand generated from our operating activities. Our management believes that our cash and cash equivalent balances and anticipated cash flows from operations will be sufficient to meet our cash requirements through at least March 2021 and for the foreseeable future. We may, however, encounter unforeseen difficulties that may deplete our capital resources more rapidly than anticipated, including those set forth under Item 1A, "Risk Factors", above. Any efforts to seek additional funding could be made through issuances of equity or debt, or other external financing. However, additional funding may not be available on favorable terms, or at all. The capital and credit markets have experienced extreme volatility and disruption in recent years, and the volatility and impact of the disruption may continue. At times during this period, the volatility and disruption has reached unprecedented levels. In several cases, the markets have exerted downward pressure on stock prices and credit capacity for certain issuers, and the commercial paper markets may not be a reliable source of short-term financing for us. If we fail to obtain additional financing when needed, we may not be able to execute our business plans and our business, conducted by our operating subsidiaries, may suffer.

Certain of our operating subsidiaries are often required to engage in litigation to enforce their patents and patent rights. In connection with any of our operating subsidiaries' patent enforcement actions, it is possible that a defendant may request and/or a court may rule that an operating subsidiary has violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against us or our operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material.

Cash, Cash Equivalents, Trading Securities, Restricted Cash and Investments

Our consolidated cash, cash equivalents, trading securities, and restricted cash totaled \$203.3 million at December 31, 2019, compared to \$165.5 million at December 31, 2018. The net change in cash, cash equivalents and restricted cash for the periods presented was comprised of the following:

	<u>2019</u>	<u>2018</u>
	(In thousands)	
Net cash provided by (used in):		
Operating activities	\$ (2,308)	\$ 20,877
Investing activities	(68,063)	(24,066)
Financing activities	33,921	(4,606)
	<u>\$ (36,450)</u>	<u>\$ (7,795)</u>

Cash Flows from Operating Activities. Cash receipts from licensees totaled \$44.0 million and \$103.4 million in fiscal years 2019 and 2018, respectively. The fluctuations in cash receipts for the periods presented primarily reflects the corresponding fluctuations in revenues recognized during the same periods, as described above, and the related timing of payments received from licensees. Cash outflows from operations totaled \$46.3 million and \$82.5 million in fiscal years 2019 and 2018, respectively. The fluctuations in cash outflows for the periods presented reflects the fluctuations in revenue-related inventor royalties and contingent legal fees and other operating costs and expenses during the same periods, as discussed above, and the impact of the timing of payments to inventors, attorneys and other vendors.

Cash Flows from Investing Activities. Cash flows from investing activities and related changes were comprised of the following for the periods presented:

	<u>2019</u>	<u>2018</u>
	(In thousands)	
Patent acquisition costs	\$ (4,420)	\$ —
Sale of investment at fair value ⁽¹⁾	6,628	19,097
(Purchase) Sale of other investments ⁽¹⁾	2,000	(7,000)
Net purchase of trading securities	(72,088)	(36,129)
Purchases of property and equipment	(183)	(34)
Net cash used in investing activities	<u>\$ (68,063)</u>	<u>\$ (24,066)</u>

(1) Refer to Note 6 for additional information

Investment in Veritone. In fiscal year 2019, Acacia sold 1,121,071 shares of Veritone common stock at a weighted average price of \$5.91 and recorded a realized loss of \$9.2 million on the sale. In fiscal year 2018, Acacia sold 2,700,000 shares of Veritone common stock at a weighted average price of \$7.07 and recorded a realized loss of \$19.1 million on the sale. Refer to Note 6 to the consolidated financial statements elsewhere herein for additional information regarding our investment with Veritone.

Investment in Miso Robotics. In February 2018, we made a strategic equity investment totaling \$6.0 million in the Series B financing round for Miso Robotics. In September 2019, we sold our entire investment in Miso Robotics for proceeds of \$2.0 million. Refer to Note 6 to the consolidated financial statements elsewhere herein for additional information regarding our investment in Miso.

Cash Flows from Financing Activities. Cash flows from financing activities and related changes included the following for the periods presented (in thousands):

	<u>2019</u>	<u>2018</u>
	(In thousands)	
Repurchase of common stock	\$ —	\$ (4,634)
Repurchase of restricted common stock	—	(229)
Issuance of Series A redeemable convertible preferred stock and Series A warrant, net of issuance costs (Note 16 and 17)	33,842	—
Proceeds from exercise of stock options	79	257
Net cash provided by (used in) financing activities	<u>\$ 33,921</u>	<u>\$ (4,606)</u>

Stock Repurchase Program. In February 2018, our board of directors authorized the Program to repurchase up to \$20 million of our outstanding common stock in open market purchases or private purchases, from time to time, in amounts and at prices to be determined by the board of directors at its discretion. In fiscal year 2018, we repurchased 1,190,420 shares at an average price of \$3.89 for \$4,634,000. The Program expired on February 28, 2019. On August 5, 2019, our board of directors approved a new stock repurchase program, which authorized the purchase of up to \$10.0 million of the Company's common stock through open market purchases, through block trades, through 10b5-1 plans, or by means of private purchases, from time to time, through July 31, 2020. In determining whether or not to repurchase any shares of Acacia's common stock, Acacia's board of directors consider such factors as the impact of the repurchase on Acacia's cash position, as well as Acacia's capital needs and whether there is a better alternative use of Acacia's capital. Acacia has no obligation to repurchase any amount of its common stock under the Stock Repurchase Program. Repurchases to date were made in the open market in compliance with applicable SEC rules. The authorization to repurchase shares presented an opportunity to reduce the outstanding share count and enhance stockholder value. The repurchased shares are expected to be retired.

Starboard Investment. On November 18, 2019, the Company entered into the Securities Purchase Agreement with Starboard pursuant to which Starboard purchased (i) 350,000 shares of Series A Preferred Stock at an aggregate purchase price of \$35,000,000, and Series A Warrants to purchase up to 5,000,000 shares of the Company's common stock. Refer to Notes 16, 17 and 19 to our notes to consolidated financial statements for more information related to the Starboard Securities.

Working Capital

The primary components of working capital are cash and cash equivalents, trading securities, accounts receivable, prepaid expenses, accounts payable, accrued expenses, and royalties and contingent legal fees payable. Working capital at December 31, 2019 was \$160.1 million, compared to \$170.4 million at December 31, 2018.

Consolidated accounts receivable from licensees decreased to \$0.5 million at December 31, 2019, compared to \$32.9 million at December 31, 2018. Accounts receivable balances fluctuate based on the timing, magnitude and payment terms associated with revenue agreements executed during the year, and the timing of cash receipts on accounts receivable balances recorded in previous periods. Two licensees individually represented approximately 70% and 17%, respectively, of accounts receivable at December 31, 2019. Four licensees individually represented approximately 38%, 36%, 12% and 11%, respectively, of accounts receivable at December 31, 2018.

Accounts payable and accrued expenses increased to \$9.5 million at December 31, 2019, from \$8.3 million at December 31, 2018.

Consolidated royalties and contingent legal fees payable decreased to \$2.2 million at December 31, 2019, compared to \$22.7 million at December 31, 2018. Royalties and contingent legal fees payable balances fluctuate based on the magnitude and timing of the execution of related license agreements, the timing of cash receipts for the related license agreements, and the timing of payment of current and prior period royalties and contingent legal fees payable to inventor and outside attorneys, respectively.

All of accounts receivable from licensees at December 31, 2019 are scheduled to be collected in the first and second quarter of 2020, in accordance with the terms of the related underlying license agreements. The majority of royalties and contingent legal fees payable are scheduled to be paid through the third quarter of 2020 in accordance with the underlying contractual arrangements.

Critical Accounting Policies

Our consolidated financial statements are prepared in conformity with accounting principles generally accepted in the United States of America. In preparing these financial statements, we make assumptions, judgments and estimates that can have a significant impact on amounts reported in our consolidated financial statements. We base our assumptions, judgments and estimates on historical experience and various other factors that we believe to be reasonable under the circumstances. Actual results could differ materially from these estimates under different assumptions or conditions. On a regular basis, we evaluate our assumptions, judgments and estimates and make changes accordingly.

We believe that, of the significant accounting policies discussed in Note 2 to our notes to consolidated financial statements, the following accounting policies require our most difficult, subjective or complex judgments:

- revenue recognition;
- stock-based compensation expense;
- valuation of long-lived and intangible assets;
- valuation of Series A Warrants and embedded derivatives; and
- accounting for income taxes.

We discuss below the critical accounting assumptions, judgments and estimates associated with these policies. Historically, our assumptions, judgments and estimates relative to our critical accounting policies have not differed materially from actual results. For further information on our critical accounting policies, refer to Note 2 to the notes to consolidated financial statements included herein.

Revenue Recognition

As described below, significant management judgment must be made and used in connection with the revenue recognized in any accounting period. Material differences may result in the amount and timing of revenue recognized or deferred for any period, if management made different judgments.

Revenue is recognized upon transfer of control of promised bundled IP rights and other contractual performance obligations to licensees in an amount that reflects the consideration we expect to receive in exchange for those IP rights. Revenue contracts that provide promises to grant the right to use IP rights as they exist at the point in time at which the IP rights are granted, are accounted for as performance obligations satisfied at a point in time and revenue is recognized at the point in time that the applicable performance obligations are satisfied and all other revenue recognition criteria have been met.

For the periods presented, revenue contracts executed by the Company primarily provided for the payment of contractually determined, one-time, paid-up license fees in consideration for the grant of certain IP rights for patented technologies owned or controlled by Acacia. Revenues also included license fees from sales-based revenue contracts, or Recurring Revenue Agreement, the majority of which were originally executed in prior periods, which provide for the payment of quarterly license fees based on quarterly sales of applicable product units by licensees. Revenues may also include court ordered settlements or awards related to our patent portfolio, or Other Settlements, or sales of our patent portfolio. IP rights granted included the following, as applicable: (i) the grant of a non-exclusive, retroactive and future license to manufacture and/or sell products covered by patented technologies, (ii) a covenant-not-to-sue, (iii) the release of the licensee from certain claims, and (iv) the dismissal of any pending litigation. The IP rights granted were perpetual in nature, extending until the legal expiration date of the related patents. The individual IP rights are not accounted for as separate performance obligations, as (i) the nature of the promise, within the context of the contract, is to transfer combined items to which the promised IP rights are inputs and (ii) the Company's promise to transfer each individual IP right described above to the customer is not separately identifiable from other promises to transfer IP rights in the contract.

Since the promised IP rights are not individually distinct, the Company combined each individual IP right in the contract into a bundle of IP rights that is distinct, and accounted for all of the IP rights promised in the contract as a single performance obligation. The IP rights granted were "functional IP rights" that have significant standalone functionality. Acacia's subsequent activities do not substantively change that functionality and do not significantly affect the utility of the IP to which the licensee has rights. Acacia's operating subsidiaries have no further obligation with respect to the grant of IP rights, including no express or implied obligation to maintain or upgrade the technology, or provide future support or services. The contracts provide for the grant (i.e., transfer of control) of the licenses, covenants-not-to-sue, releases, and other significant deliverables upon execution of the contract. Licensees legally obtain control of the IP rights upon execution of the contract. As such, the earnings process is complete and revenue is recognized upon the execution of the contract, when collectability is probable and all other revenue recognition criteria have been met. Revenue contracts generally provide for payment of contractual amounts with 30-90 days of execution of the contract, or the end of the quarter in which the sale or usage occurs for Recurring Revenue Agreements. Contractual payments made by licensees are generally non-refundable.

For sales-based royalties, the Company includes in the transaction price some or all of an amount of estimated variable consideration to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Notwithstanding, revenue is recognized for a sales-based royalty promised in exchange for a license of IP rights when the later of (i) the subsequent sale or usage occurs, or (ii) the performance obligation to which some or all of the sales-based royalty has been allocated has been satisfied. Estimates are generally based on historical levels of activity, if available.

Revenues from contracts with significant financing components (either explicit or implicit) are recognized at an amount that reflects the price that a licensee would have paid if the licensee had paid cash for the IP rights when they transfer to the licensee. In determining the transaction price, the Company adjusts the promised amount of consideration for the effects of the time value of money. As a practical expedient, the Company does not adjust the promised amount of consideration for the effects of a significant financing component if the Company expects, at contract inception, that the period between when the entity transfers promised IP rights to a customer and when the customer pays for the IP rights will be one year or less.

In general, the Company is required to make certain judgments and estimates in connection with the accounting for revenue contracts with customers. Such areas may include identifying performance obligations in the contract, estimating the timing of satisfaction of performance obligations, determining whether a promise to grant a license is distinct from other promised goods or services, evaluating whether a license transfers to a customer at a point in time or over time, allocating the transaction price to separate performance obligations, determining whether contracts contain a significant financing component, and estimating revenues recognized at a point in time for sales-based royalties.

For fiscal years 2019 and 2018, the majority of our revenue agreements provided for the payment to us of one-time, paid-up license fees in consideration for the grant of certain IP rights for patented technology rights owned by our operating subsidiaries. These rights were primarily granted on a perpetual basis, extending until the expiration of the underlying patents. Pursuant to the terms of these agreements, our operating subsidiaries have no further obligation with respect to the grant of the non-exclusive licenses, covenants-not-to-sue, releases, and other deliverables, including no express or implied obligation on our operating subsidiaries' part to maintain or upgrade the technology, or provide future support or services. The agreements provided for the grant of the licenses, covenants-not-to-sue, releases, and other significant contractual performance obligations upon execution of the agreement. As such, the earnings process was determined to be complete and revenue was recognized upon the execution of the agreements. Historically, term license agreements have not been a material component of our operating revenues, with the majority of license agreements being paid-up, perpetual license agreements.

Stock-based Compensation Expense

Equity Based Awards. Stock-based compensation payments to employees and non-employee directors are recognized as expense in the statements of operations. The compensation cost for all stock-based awards is measured at the grant date, based on the fair value of the award (determined using a Black-Scholes option pricing model for stock options and intrinsic value on the date of grant for non-vested restricted stock), and is recognized as an expense over the employee's requisite service period (generally the vesting period of the equity award). Determining the fair value of stock-based awards at the grant date requires significant estimates and judgments, including estimating the market price volatility of our common stock, future employee stock option exercise behavior and requisite service periods. We account for forfeitures of awards as they occur

During the year ended December 31, 2019, the Company granted restricted stock units with market-based vesting conditions. The restricted stock units with market-based vesting conditions vest based upon the Company achieving specified stock price targets over a three-year period. The effect of a market-based vesting condition is reflected in the estimate of the grant-date fair value of the options utilizing a Monte Carlo valuation technique. Refer to Notes 9 to our notes to consolidated financial statements for more information related to restricted stock units granted.

Valuation of Long-lived and Intangible Assets

Patent Portfolio Impairment Testing. We review long-lived assets and intangible assets for potential impairment annually (quarterly for patents) and when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. In the event the expected undiscounted future cash flows resulting from the use of the asset is less than the carrying amount of the asset, an impairment loss is recorded equal to the excess of the asset's carrying value over its fair value. If an asset is determined to be impaired, the loss is measured based on quoted market prices in active markets, if available. If quoted market prices are not available, the estimate of fair value is based on various valuation techniques, including a discounted value of estimated future cash flows.

We did not record any patent portfolio impairment charges for the fiscal year ended December 31, 2019. We recorded \$28.2 million in patent portfolio charges for the fiscal year ended December 31, 2018. The impairment charges were recorded in the periods due to adverse litigation outcomes, a reduction in expected estimated future net cash flows and certain patent portfolios that management determined it would no longer allocate future resources to in connection with the licensing and enforcement of such portfolios. The impairment charges consisted of the excess of the asset's carrying value over its estimated fair value as of the applicable measurement date. Estimated fair value was determined based on estimates of future cash flows and estimates of probabilities of realization given adverse litigation outcomes and resource allocation decisions.

Valuation of Embedded Derivatives

Embedded derivatives that are required to be bifurcated from their host contract are evaluated and valued separately from host instrument. A binomial lattice framework is used to estimate the fair value of the embedded derivative put option, conversion option, call option, and contingent dividend rate feature in the Series A Preferred Stock issued by the Company in 2019. The binomial model utilizes the Tsiveriotis and Fernandes ("TF") implementation in which a convertible instrument is split into two separate components: a cash-only component which is subject to the selected risk-adjusted discount rate and an equity component which is subject only to the risk-free rate. The model considers the (i) implied volatility of the value of our common stock, (ii) appropriate risk-free interest rate, (iii) credit spread, (iv) dividend yield, (v) dividend accrual (and a step-up in rates), and (vi) event probabilities of the various conversion and redemption scenarios.

The implied volatility of the Company's common stock is estimated based on a haircut applied to the historical volatility. A volatility haircut is a concept used to describe a commonly observed occurrence in which the volatility implied by market prices involving options, warrants, and convertible debt is lower than historical actual realized volatility. The assumed base case term used in the valuation model is the period remaining until November 15, 2027 (the maturity date). The risk-free interest rate is based on the yield on the U.S. Treasury with a remaining term equal to the expected term of the conversion and early redemption options. The significant assumptions utilized in the Company's valuation of the embedded derivative at December 31, 2019 are as follows: volatility of 30 percent, risk-free rate of 1.86 percent, a credit spread of 25 percent and a dividend yield of 0 percent.

Accounting for Income Taxes

As part of the process of preparing our consolidated financial statements, we are required to estimate our income taxes in each of the jurisdictions in which we operate. This process involves the estimating of our actual current tax exposure together with assessing temporary differences resulting from differing treatment of items. These differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheets. We must then assess the likelihood that our deferred tax assets will be recovered from future taxable income and to the extent we believe that recovery is not likely, we must establish a valuation allowance. To the extent we establish a valuation allowance or increase this allowance in a period, we must include an expense within the tax provision in the consolidated statements of operations.

Significant management judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities and our valuation allowance. Due to uncertainties related to our ability to utilize certain deferred tax assets in future periods, we have recorded a full valuation allowance against our net deferred tax assets as of December 31, 2019 and 2018. These assets primarily consist of foreign tax credits, capital loss carryforwards and net operating loss carryforwards.

In assessing the need for a valuation allowance, management has considered both the positive and negative evidence available, including but not limited to, estimates of future taxable income and related probabilities, estimates surrounding the character of future income and the timing of realization, consideration of the period over which our deferred tax assets may be recoverable, our recent history of net income and prior history of losses, projected future outcomes, industry and market trends and the nature of existing deferred tax assets. In management's estimate, any positive indicators, including forecasts of potential future profitability of our businesses, are outweighed by the uncertainties surrounding our estimates and judgments of potential future taxable income, primarily due to uncertainties surrounding the timing of realization of future taxable income and the character of such income in particular future periods (i.e. foreign or domestic). In the event that actual results differ from these estimates or we adjust these estimates should we believe we would be able to realize these deferred tax assets in the future, an adjustment to the valuation allowance would increase income in the period such determination was made.

Any changes in the judgments, assumptions and estimates associated with our analysis of the need for a valuation allowance in any future periods could materially impact our financial position and results of operations in the periods in which those determinations are made.

Recently Adopted Accounting Pronouncements

In February 2016, FASB issued ASU 2016-02, *Leases*, or ASC 842 which requires a lessee to recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset. In July 2018, FASB issued ASU 2018-11, *Leases*, which provides an additional transition option for an entity to apply the provisions of ASC 842 by recognizing a cumulative effect adjustment at the effective date of adoption without adjusting the prior comparative periods presented. Further, in January 2019, FASB issued ASU 2019-01, *Leases: Codification Improvements*, which provides disclosure relief for the interim periods when adopting ASC 842. The primary impact of adopting ASC 842 for the Company was the recognition in the consolidated balance sheet of certain lease-related assets and liabilities for operating leases with terms longer than 12 months as of January 1, 2019. Such amounts were not previously accounted for in the Company's consolidated balance sheets. The Company adopted ASC 842 as of January 1, 2019, electing the practical expedient approaches. The adoption of ASC 842 did not have a material impact on the Company's consolidated results of operations for the year ending December 31, 2019.

Off-Balance Sheet Arrangements

We have not entered into off-balance sheet financing arrangements.

Uncertain Tax Positions. At December 31, 2019, we had total unrecognized tax benefits of approximately \$731,000. A noncurrent liability of \$85,000 related to unrecognized tax benefits primarily associated with state taxes was written off during 2019. No interest and penalties have been recorded for the unrecognized tax benefits as of December 31, 2019. If recognized, approximately \$731,000 would impact our effective tax rate. We do not expect that the liability for unrecognized tax benefits will change significantly within the next 12 months.

Recent Accounting Pronouncements

Refer to Note 2 to our notes to consolidated financial statements included elsewhere herein.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The primary objective of our trading securities activities is to preserve principal while concurrently maximizing the income we receive from our trading securities without significantly increasing risk. Some of the securities that we invest in may be subject to interest rate risk and/or market risk. This means that a change in prevailing interest rates, with respect to interest rate risk, or a change in the value of the United States equity markets, with respect to market risk, may cause the principal amount or market value of the trading securities to fluctuate. For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the prevailing interest rate later rises, the current value of the principal amount of our investment may decline. To minimize these risks in the future, we intend to maintain our portfolio of cash equivalents and trading securities in a variety of securities, including commercial paper, money market funds, high-grade corporate bonds, government and non-government debt securities and certificates of deposit.

At December 31, 2019 and December 31, 2018, our trading securities were comprised of AAA rated money market funds that invest in first-tier only securities, which primarily include domestic commercial paper, securities issued or guaranteed by the U.S. government or its agencies, U.S. bank obligations, and fully collateralized repurchase agreements (included in cash and cash equivalents in the accompanying consolidated balance sheets), and direct investments in short term, highly liquid, investment grade, U.S. government and corporate securities (included in trading securities in the accompanying consolidated balance sheets).

In general, money market funds are not subject to market risk because the interest paid on such funds fluctuates with the prevailing interest rate. Accordingly, a 100 basis point increase in interest rates or a 10% decline in the value of the United States equity markets would not be expected to have a material impact on the value of such money market funds. Investments in U.S. government fixed income securities are subject to interest rate risk and will decline in value if interest rates increase. However, due to the relatively short duration of our trading securities portfolio, an immediate 10% change in interest rates would have no material impact on our financial condition, results of operations or cash flows. Declines in interest rates over time will, however, reduce our interest income.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements and related financial information required to be filed hereunder are indexed under Item 15 of this report and are incorporated herein by reference.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

(a) Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Corporate Controller, we conducted an evaluation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on this evaluation, our Chief Executive Officer and Corporate Controller concluded that, as of December 31, 2019, our disclosure controls and procedures were effective to ensure that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Corporate Controller, as appropriate to allow timely decisions regarding required disclosure, and that such information is recorded, processed, summarized and reported within the time periods prescribed by the SEC.

(b) Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our Chief Executive Officer and Corporate Controller, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the 2013 framework in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in *Internal Control - Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2019.

Grant Thornton LLP, the independent registered public accounting firm who audited our consolidated financial statements included in this annual report, has issued an attestation report on the effectiveness of our internal control over financial reporting as of December 31, 2019, which is included herein.

Changes in Internal Controls. There were no changes in our internal control over financial reporting during the fourth fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Effectiveness of Controls. Our management, including our Chief Executive Officer and Corporate Controller, does not expect that our disclosure controls or our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been detected. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of the effectiveness of controls to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Except as provided below, in accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2020 annual meeting of stockholders to be filed with the SEC no later than April 30, 2020.

Code of Conduct.

We have adopted a Code of Conduct that applies to all employees, including our Chief Executive Officer and Corporate Controller and any persons performing similar functions. Our Code of Conduct is provided on our internet website at www.acaciaresearch.com.

ITEM 11. EXECUTIVE COMPENSATION

In accordance with General Instruction G(3) to Form 10-K, the information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2020 annual meeting of stockholders to be filed with the SEC no later than April 30, 2020.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

In accordance with General Instruction G(3) to Form 10-K, certain information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2020 annual meeting of stockholders to be filed with the SEC no later than April 30, 2020.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

In accordance with General Instruction G(3) to Form 10-K, the information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2020 annual meeting of stockholders to be filed with the SEC no later than April 30, 2020.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

In accordance with General Instruction G(3) to Form 10-K, the information required by this Item is incorporated herein by reference to our definitive proxy statement for our 2020 annual meeting of stockholders to be filed with the SEC no later than April 30, 2020.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this report.

(1) Financial Statements

Page

Acacia Research Corporation Consolidated Financial Statements

[Reports of Independent Registered Public Accounting Firm](#)

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[Consolidated Balance Sheets as of December 31, 2019 and 2018](#)

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[Consolidated Statements of Operations for the Years Ended December 31, 2019 and 2018](#)

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[Consolidated Statements of Comprehensive Loss for the Years Ended December 31, 2019 and 2018](#)

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[Consolidated Statements of Series A Redeemable Convertible Preferred Stock and Stockholders' Equity for the Years Ended December 31, 2019 and 2018](#)

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[Consolidated Statements of Cash Flows for the Years Ended December 31, 2019 and 2018](#)

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[Notes to Consolidated Financial Statements](#)

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(2) Financial Statement Schedules

Financial statement schedules are omitted because they are not applicable or the required information is shown in the Financial Statements or the Notes thereto.

(3) Exhibits

Refer to Item 15(b) below.

(b) Exhibits. The following exhibits are either filed herewith or incorporated herein by reference:

Exhibit Number	Description
2.1	Agreement and Plan of Merger, dated November 22, 2011, by and among Acacia Research Group LLC, Apollo Patent Corp., Adaptix, Inc., and Baker Communications Fund II (QP), L.P., solely in its capacity as representative for the shareholders of Adaptix, Inc. (3)
3.1	Amended and Restated Certificate of Incorporation (as updated through February 18, 2020 and currently in effect)
3.2	Amended and Restated Certificate of Designations, Preferences and Rights of Series A Convertible Preferred Stock, as filed with the Delaware Secretary of State on January 7, 2020 (1)
3.3	Second Amended and Restated Bylaws (7)
4.1	Tax Benefits Preservation Plan, dated as of March 16, 2019, by and between Acacia Research Corporation and Computershare Inc., as Rights Agent, which includes the Form of Certificate of Designation, Preferences and Rights of Participating Preferred Stock as Exhibit A, the Form of Rights Certificate as Exhibit B and the Summary of Terms as Exhibit C (21)
4.2	Description of Acacia Research Corporation Capital Stock
4.3	Form of Senior Secured Note (15)
4.4	Form of Series A Warrant to Purchase Common Stock (16)
4.5	Form of Series B Warrant to Purchase Common Stock (17)
10.1	Form of Indemnification Agreement
10.2*	Acacia Research Corporation Amended and Restated Executive Severance Policy (2)
10.3	Form of Purchase Agreement (4)
10.4*	2013 Acacia Research Corporation Stock Incentive Plan (5)
10.5*	Form of Stock Issuance Agreement under the 2013 Acacia Research Corporation Stock Incentive Plan (6)
10.6*	2016 Acacia Research Corporation Stock Incentive Plan (8)
10.7*	Form of Stock Option Agreement under the 2016 Acacia Research Corporation Stock Incentive Plan (9)
10.8*	Form of Stock Issuance Agreement under the 2016 Acacia Research Corporation Stock Incentive Plan (9)
10.9*	Form of Profits Interest Agreement Under AIP Operation LLC Profits Interest Plan (10)
10.10	Investment Agreement dated August 15, 2016, by and between Acacia Research Corporation and Veritone, Inc. (11)
10.11	Secured Promissory Note dated August 15, 2016, issued by Veritone, Inc. to Acacia Research Corporation (11)
10.12	Primary Common Stock Purchase Warrant dated August 15, 2016, issued by Veritone, Inc. to Acacia Research Corporation, together with form of 10% Warrant to Purchase Common Stock (11)
10.13	Common Stock Purchase Warrant dated August 15, 2016, issued by Veritone, Inc. to Acacia Research Corporation (11)
10.14	Common Stock Purchase Warrant dated November 25, 2016, issued by Veritone, Inc. to Acacia Research Corporation (11)
10.15	Common Stock Purchase Warrant dated November 25, 2016, issued by Veritone, Inc. to Acacia Research Corporation (11)
10.16*	Employment Agreement, effective August 13, 2018, by and between Acacia Research Group, LLC and Marc Booth (12)
10.17*	Separation Agreement and General Release of Claims, effective August 10, 2018, by and between Acacia Research Group, LLC and Clayton J. Haynes (12)
10.18*	Consulting Agreement, effective August 10, 2018, by and between Acacia Research Corporation and Clayton J. Haynes (12)
10.19*	Separation Agreement and General Release of Claims, effective August 10, 2018, by and between Acacia Research Group, LLC and Edward J. Treska (12)

10.20*	Consulting Agreement, effective August 10, 2018, by and between Acacia Research Corporation and Edward J. Treska (12)
10.21*	Separation Agreement and General Release of Claims, dated February 12, 2019, by and between Acacia Research Group, LLC and Kirsten Hoover (13)
10.22*	Employment Agreement, dated September 3, 2019, by and among Acacia Research Group LLC, Acacia Research Corporation and Clifford Press (14)
10.23*	Employment Agreement, dated September 3, 2019, by and among Acacia Research Group LLC, Acacia Research Corporation and Alfred Tobia (14)
10.24	Securities Purchase Agreement dated November 18, 2019, by and among Acacia Research Corporation, Starboard Value LP and the investors listed on the Schedule of Buyers attached thereto (18)
10.25	Registration Rights Agreement dated November 18, 2019, by and among Acacia Research Corporation and the investors listed on the Schedule of Buyers attached thereto (19)
10.26	Governance Agreement dated November 18, 2019 and amended January 7, 2020 , by and among Acacia Research Corporation and the entities and natural persons set forth on the signature pages thereto (20)
10.27	Lease Agreement dated June 7, 2019, by and between Acacia Research Corporation and Jamboree Center 4 LLC
21.1	List of Subsidiaries
23.1	Consent of Independent Registered Public Accounting Firm
24.1	Power of Attorney (included in the signature page hereto).
31.1†	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
31.2†	Certification of Corporate Controller Pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934
32.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
32.2	Certification of Corporate Controller Pursuant to Rule 13a-14(b)/15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350
101	Interactive Data Files Pursuant to Rule 405 of Regulation S-T.

* The referenced exhibit is a management contract, compensatory plan or arrangement required to be filed as an exhibit to this Annual Report on Form 10-K pursuant to Item 15(c) of Form 10-K.

† The certifications attached as Exhibits 32.1 and 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the SEC and are not to be incorporated by reference into any filing of Acacia Research Corporation under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Annual Report on Form 10-K, regardless of any general incorporation language contained in any filing.

- (1) Incorporated by reference to Appendix B to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on January 17, 2020 (File No. 001-37721).
- (2) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2008, filed on February 26, 2009 (File No. 000-26068).
- (3) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K/A filed on January 19, 2012 (File No. 000-26068). Portions of this exhibit have been omitted pursuant to a request for confidential treatment under Rule 24-b-2 of the Securities Exchange Act of 1934, as amended. The omitted material has been separately filed with the Securities and Exchange Commission.
- (4) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on February 16, 2012 (File No. 000-26068).
- (5) Incorporated by reference to Annex A to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on April 24, 2013 (File No. 000-26068).
- (6) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K on May 22, 2013 (File No. 000-26068)

- (7) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 8-K filed on July 25, 2019 (File No. 001-37721).
- (8) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended June 30, 2016, filed on August 9, 2016 (File No. 001-37721).
- (9) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2016, filed on March 10, 2017 (File No. 001-37721).
- (10) Incorporated by reference to Acacia Research Corporation's Quarterly Report on Form 10-Q for the period ended March 31, 2017, filed on May 10, 2017 (File No. 001-37721).
- (11) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on March 16, 2017 (File No. 001-37721).
- (12) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on August 16, 2018 (File No. 001-37721).
- (13) Incorporated by reference to Acacia Research Corporation's Current Report on Form 8-K filed on February 13, 2019 (File No. 001-37721).
- (14) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-Q for the period ended September 30, 2019, filed on November 12, 2019 (File No. 001-37721).
- (15) Incorporated by reference to Appendix E to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on January 17, 2020 (File No. 001-37721).
- (16) Incorporated by reference to Appendix C to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on January 17, 2020 (File No. 001-37721).
- (17) Incorporated by reference to Appendix D to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on January 17, 2020 (File No. 001-37721).
- (18) Incorporated by reference to Appendix A to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on January 17, 2020 (File No. 001-37721).
- (19) Incorporated by reference to Appendix F to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on January 17, 2020 (File No. 001-37721).
- (20) Incorporated by reference to Appendix G to Acacia Research Corporation's Definitive Proxy Statement on Schedule 14A filed on January 17, 2020 (File No. 001-37721);
- (21) Incorporated by reference to Acacia Research Corporation's Annual Report on Form 10-K for the year ended December 31, 2018, filed on March 15, 2019 (File No. 001-37721).

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Acacia Research Corporation

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of Acacia Research Corporation and subsidiaries (the “Company”) as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive loss, changes in series A redeemable convertible preferred stock and stockholders’ equity, and cash flows for each of the two years in the period ended December 31, 2019, and the related notes (collectively referred to as the “financial statements”). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2019, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the Company’s internal control over financial reporting as of December 31, 2019, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”), and our report dated March 16, 2020 expressed an unqualified opinion.

Basis for opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ GRANT THORNTON LLP

We have served as the Company’s auditor since 2007.

Newport Beach, CA
March 16, 2020

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Stockholders
Acacia Research Corporation

Opinion on internal control over financial reporting

We have audited the internal control over financial reporting of Acacia Research Corporation and subsidiaries (the "Company") as of December 31, 2019, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in the 2013 *Internal Control—Integrated Framework* issued by COSO.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated financial statements of the Company as of and for the year ended December 31, 2019, and our report dated March 16, 2020 expressed an unqualified opinion on those financial statements.

Basis for opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting ("Management's Report"). Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and limitations of internal control over financial reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ GRANT THORNTON LLP

Newport Beach, CA
March 16, 2020

ACACIA RESEARCH CORPORATION
CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share information)

	December 31, 2019	December 31, 2018
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 57,359	\$ 128,809
Trading securities - debt	93,843	33,642
Trading securities - equity	17,140	3,012
Accounts receivable	511	32,884
Prepaid expenses and other current assets	2,912	3,125
Total current assets	171,765	201,472
Long-term restricted cash	35,000	-
Investment at fair value (Note 6)	1,500	7,459
Other investments (Note 6)	-	8,195
Patents, net of accumulated amortization	7,814	6,587
Leased right-of-use assets	1,264	-
Other non-current assets	818	236
Total assets	\$ 218,161	\$ 223,949
LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 1,765	\$ 3,698
Accrued expenses and other current liabilities	7,265	4,299
Accrued compensation	507	350
Royalties and contingent legal fees payable	2,178	22,688
Total current liabilities	11,715	31,035
Series A warrant liabilities	3,568	-
Series A embedded derivative liabilities	17,974	-
Long-term lease liabilities	1,264	-
Other long-term liabilities	593	1,674
Total liabilities	35,114	32,709
Commitments and contingencies (Note 10)		
Series A redeemable convertible preferred stock, par value \$0.001 per share; stated value \$100 per share; 350,000 shares authorized, issued and outstanding as of December 31, 2019; no shares authorized, issued or outstanding as of December 31, 2018; aggregate liquidation preference of \$35,125 and \$0 as of December 31, 2019 and December 31, 2018, respectively (Note 16)		
	8,089	-
Stockholders' equity:		
Preferred stock, par value \$0.001 per share; 10,000,000 shares authorized; no shares issued or outstanding	-	-
Common stock, par value \$0.001 per share; 100,000,000 shares authorized; 50,370,987 and 49,639,319 shares issued and outstanding as of December 31, 2019 and December 31, 2018, respectively	50	50
Treasury stock, at cost, 2,919,828 shares as of December 31, 2019 and December 31, 2018	(39,272)	(39,272)
Additional paid-in capital	652,003	651,156
Accumulated deficit	(439,656)	(422,541)
Total Acacia Research Corporation stockholders' equity	173,125	189,393
Noncontrolling interests	1,833	1,847
Total stockholders' equity	174,958	191,240
Total liabilities, redeemable convertible preferred stock, and stockholders' equity	\$ 218,161	\$ 223,949

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

ACACIA RESEARCH CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except share and per share information)

	Years Ended December 31,	
	2019	2018
Revenues	\$ 11,246	\$ 131,506
Portfolio operations:		
Inventor royalties	4,944	35,168
Contingent legal fees	591	31,501
Patent acquisition expenses	–	4,000
Litigation and licensing expenses - patents	7,803	8,866
Amortization of patents	3,194	27,120
Other portfolio expenses	1,756	2,602
Total portfolio operations	18,288	109,257
Net portfolio income (loss)	(7,042)	22,249
General and administrative expenses ⁽¹⁾	16,376	18,728
Impairment of patent-related intangible assets	–	28,210
Operating loss	(23,418)	(24,689)
Other income (expense):		
Change in fair value of investment, net (Note 6)	9,899	(59,103)
Loss on sale of investment (Note 6)	(9,230)	(19,095)
Impairment of other investment (Note 6)	(8,195)	(1,000)
Gain on disposal of other investment (Note 6)	2,000	–
Change in fair value of the Series A warrants and embedded derivative	4,518	–
Interest income and other	5,473	218
Total other income (expense)	4,465	(78,980)
Loss before income taxes	(18,953)	(103,669)
Income taxes (expense) benefit	1,824	(1,179)
Net loss including noncontrolling interests in subsidiaries	(17,129)	(104,848)
Net (income) loss attributable to noncontrolling interests in subsidiaries	14	(181)
Net loss attributable to Acacia Research Corporation	(17,115)	(105,029)
Less: Accretion of redeemable preferred stock	(307)	–
Net loss attributable to common stockholders - basic	\$ (17,422)	\$ (105,029)
Basic net loss per share of common stock	\$ (0.35)	\$ (2.10)
Weighted average number of shares outstanding - basic	49,764,002	49,969,062
Add: Accretion of redeemable preferred stock	307	–
Less: Mark-to-market adjustment for preferred stock embedded derivative	(3,258)	–
Net loss attributable to common stockholders - diluted	\$ (20,373)	\$ (105,029)
Diluted net loss per share of common stock	\$ (0.40)	\$ (2.10)
Weighted average number of shares outstanding - diluted	50,896,773	49,969,062

(1) General and administrative expenses were comprised of the following:

	Years Ended December 31,	
	2019	2018
General and administrative expenses	\$ 15,301	\$ 19,045
Non-cash stock compensation expense - G&A	1,075	2,133
Non-cash stock compensation expense - Profits Interests	–	(2,450)
Total general and administrative expenses	\$ 16,376	\$ 18,728

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

ACACIA RESEARCH CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands)

	Years Ended December 31,	
	2019	2018
Net loss including noncontrolling interests	\$ (17,129)	\$ (104,848)
Other comprehensive income (loss):		
Unrealized loss on foreign currency translation, net of tax of \$0.	—	88
Total other comprehensive loss	(17,129)	(104,760)
Comprehensive (income) loss attributable to noncontrolling interests	14	(181)
Comprehensive loss attributable to Acacia Research Corporation	\$ (17,115)	\$ (104,941)

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

ACACIA RESEARCH CORPORATION
CONSOLIDATED STATEMENTS OF SERIES A REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY
(In thousands, except share information)

For the Year Ended December 31, 2019

	Series A Redeemable Convertible Preferred Stock		Common Stock		Treasury Stock	Additional Paid-in Capital	Accumulated Comprehensive Income (loss)	Accumulated Deficit	Noncontrolling Interests in Operating Subsidiaries	Total Stockholders' Equity
	Shares	Amount	Shares	Amount						
	Balance at December 31, 2018	-	\$ -	49,639,319	\$ 50	\$ (39,272)	\$ 651,156	\$ -	\$ (422,541)	\$ 1,847
Net loss attributable to Acacia Research Corporation	-	-	-	-	-	-	-	(17,115)	-	(17,115)
Issuance of shares of Series A redeemable convertible preferred stock, net of embedded derivative, Series A warrants, and issuance costs	350,000	7,782	-	-	-	-	-	-	-	-
Accretion of Series A redeemable convertible preferred stock to redemption value	-	307	-	-	-	(307)	-	-	-	(307)
Stock options exercised	-	-	25,136	-	-	79	-	-	-	79
Compensation expense for share-based awards, net of forfeitures	-	-	706,532	-	-	1,075	-	-	-	1,075
Net loss attributable to noncontrolling interests in subsidiaries	-	-	-	-	-	-	-	-	(14)	(14)
Balance at December 31, 2019	350,000	\$ 8,089	50,370,987	\$ 50	\$ (39,272)	\$ 652,003	\$ -	\$ (439,656)	\$ 1,833	\$ 174,958

For the Year Ended December 31, 2018

	Series A Redeemable Convertible Preferred Stock		Common Stock		Treasury	Additional	Accumulated	Accumulated	Noncontrolling	Total
	Shares	Amount	Shares	Amount	Stock	Paid-in Capital	Income (loss)	Deficit	Interests in Operating Subsidiaries	Stockholders' Equity
Balance at December 31, 2017	-	\$ -	50,639,926	\$ 51	\$ (34,640)	\$ 648,996	\$ (88)	\$ (320,018)	\$ 1,358	\$ 295,659
Net loss attributable to Acacia Research Corporation	-	-	-	-	-	-	-	(105,029)	-	(105,029)
Cumulative effect of new accounting principle	-	-	-	-	-	-	-	2,506	308	2,814
Stock options exercised	-	-	82,615	-	-	257	-	-	-	257
Compensation expense for share- based awards, net of forfeitures	-	-	166,998	1	-	2,132	-	-	-	2,133
Repurchase of restricted common stock	-	-	(59,800)	-	-	(229)	-	-	-	(229)
Repurchase of common stock	-	-	(1,190,420)	(2)	(4,632)	-	-	-	-	(4,634)
Net income attributable to noncontrolling interests in subsidiaries	-	-	-	-	-	-	-	-	181	181
Unrealized loss on foreign currency translation	-	-	-	-	-	-	88	-	-	88
Balance at December 31, 2018	-	\$ -	49,639,319	\$ 50	\$ (39,272)	\$ 651,156	\$ -	\$ (422,541)	\$ 1,847	\$ 191,240

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

ACACIA RESEARCH CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Years Ended December 31,	
	2019	2018
Cash flows from operating activities:		
Net loss including noncontrolling interests in subsidiaries	\$ (17,129)	\$ (104,848)
Adjustments to reconcile net loss including noncontrolling interests in subsidiaries to net cash provided by (used in) operating activities:		
Change in fair value of investment, net (Note 6)	(9,899)	59,103
Loss on sale of investment (Note 6)	9,230	19,095
Impairment of other investment (Note 6)	8,195	1,000
Gain on disposal of other investment (Note 6)	(2,000)	–
Depreciation and amortization	3,227	27,145
Change in fair value of Series A redeemable convertible preferred stock embedded derivative	(3,258)	–
Change in fair value of Series A warrant	(1,260)	–
Non-cash stock compensation	1,075	(317)
Change in value of trading securities	(2,241)	–
Impairment of patent-related intangible assets	–	28,210
Other	–	(436)
Changes in assets and liabilities:		
Accounts receivable	32,373	(28,189)
Prepaid expenses and other assets	(220)	(208)
Accounts payable and accrued expenses	109	963
Royalties and contingent legal fees payable	(20,510)	19,359
Net cash provided by (used in) operating activities	<u>(2,308)</u>	<u>20,877</u>
Cash flows from investing activities:		
Patent acquisition costs	(4,420)	–
Sale of investment at fair value (Note 6)	6,628	19,097
(Purchase) Sale of other investments (Note 6)	2,000	(7,000)
Purchases of trading securities	(147,178)	(102,769)
Maturities and sales of trading securities	75,090	66,640
Purchases of property and equipment	(183)	(34)
Net cash provided by (used in) investing activities	<u>(68,063)</u>	<u>(24,066)</u>
Cash flows from financing activities:		
Repurchase of common stock	–	(4,634)
Repurchase of restricted common stock	–	(229)
Issuance of Series A redeemable convertible preferred stock and Series A warrants, net of issuance costs	33,842	–
Proceeds from exercise of stock options	79	257
Net cash provided by (used in) financing activities	<u>33,921</u>	<u>(4,606)</u>
Decrease in cash and cash equivalents and restricted cash	(36,450)	(7,795)
Cash and cash equivalents and restricted cash, beginning	<u>128,809</u>	<u>136,604</u>
Cash and cash equivalents and restricted cash, ending	<u>\$ 92,359</u>	<u>\$ 128,809</u>

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

ACACIA RESEARCH CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. DESCRIPTION OF BUSINESS

Description of Business. As used herein, “we,” “us,” “our,” “Acacia” and the “Company” refer to Acacia Research Corporation and/or its wholly and majority-owned and controlled operating subsidiaries, and/or where applicable, its management.

Acacia’s operating subsidiaries invest in, license and enforce patented technologies. Acacia’s operating subsidiaries partner with inventors and patent owners, applying their legal and technology expertise to patent assets to unlock the financial value in their patented inventions. In recent years, Acacia has also invested in technology companies. Acacia leverages its experience, expertise, data and relationships developed as a leader in the IP industry to pursue these opportunities. In some cases, these opportunities will complement and/or supplement Acacia’s primary licensing and enforcement business.

Acacia’s operating subsidiaries generate revenues and related cash flows from the granting of IP rights for the use of patented technologies that its operating subsidiaries control or own. Acacia’s operating subsidiaries assist patent owners with the prosecution and development of their patent portfolios, the protection of their patented inventions from unauthorized use, the generation of licensing revenue from users of their patented technologies and, where necessary, with the enforcement against unauthorized users of their patented technologies through the filing of patent infringement litigation.

Acacia’s operating subsidiaries are principals in the licensing and enforcement effort, obtaining control of the rights in the patent portfolio, or control of the patent portfolio outright. Acacia’s operating subsidiaries own or control the rights to multiple patent portfolios, which include U.S. patents and certain foreign counterparts, covering technologies used in a wide variety of industries.

Neither Acacia nor its operating subsidiaries invent new technologies or products; rather, Acacia depends upon the identification and investment in new patents, inventions and companies that own IP through its relationships with inventors, universities, research institutions, technology companies and others. If Acacia’s operating subsidiaries are unable to maintain those relationships and identify and grow new relationships, then they may not be able to identify new technology-based opportunities for sustainable revenue and/or revenue growth.

During fiscal year 2019, Acacia obtained control of five new patent portfolios. During fiscal year 2018, Acacia did not obtain control of any new patent portfolios.

Acacia was incorporated on January 25, 1993 under the laws of the State of California. In December 1999, Acacia changed its state of incorporation from California to Delaware.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Accounting Principles. The consolidated financial statements and accompanying notes are prepared on the accrual basis of accounting in accordance with generally accepted accounting principles in the United States of America (“U.S. GAAP”).

Principles of Consolidation. The accompanying consolidated financial statements include the accounts of Acacia and its wholly and majority-owned and controlled subsidiaries. Material intercompany transactions and balances have been eliminated in consolidation.

Noncontrolling interests in Acacia’s majority-owned and controlled operating subsidiaries (“noncontrolling interests”) are separately presented as a component of stockholders’ equity. Consolidated net income or (loss) is adjusted to include the net (income) or loss attributed to noncontrolling interests in the consolidated statements of operations. Refer to the accompanying consolidated statements of Series A redeemable convertible preferred stock and stockholders’ equity for total noncontrolling interests.

A wholly owned subsidiary of Acacia is the general partner of the Acacia Intellectual Property Fund, L.P. (the “Acacia IP Fund”), which was formed in August 2010. The Acacia IP Fund is included in the Company’s consolidated financial statements since 2010, as Acacia’s wholly owned subsidiary, as the general partner, has the ability to control the operations and activities of the Acacia IP Fund. The Acacia IP Fund was terminated as of December 31, 2017 and is in the process of being liquidated.

Revenue Recognition. Revenue is recognized upon transfer of control of promised bundled IP rights (hereinafter "IP Rights") and other contractual performance obligations to licensees in an amount that reflects the consideration we expect to receive in exchange for those IP Rights. Revenue contracts that provide promises to grant the right to use IP Rights as they exist at the point in time at which the IP Rights are granted, are accounted for as performance obligations satisfied at a point in time and revenue is recognized at the point in time that the applicable performance obligations are satisfied and all other revenue recognition criteria have been met.

For the periods presented, revenue contracts executed by the Company primarily provided for the payment of contractually determined, one-time, paid-up license fees in consideration for the grant of certain IP Rights for patented technologies owned or controlled by Acacia ("Paid-up Revenue Agreements"). Revenues also included license fees from sales-based revenue contracts, the majority of which were originally executed in prior periods, which provide for the payment of quarterly license fees based on quarterly sales of applicable product units by licensees ("Recurring Revenue Agreements"). Revenues may also include court ordered settlements or awards related to our patent portfolio ("Other Settlements") or sales of our patent portfolio ("Sales"). IP Rights granted included the following, as applicable: (i) the grant of a non-exclusive, retroactive and future license to manufacture and/or sell products covered by patented technologies, (ii) a covenant-not-to-sue, (iii) the release of the licensee from certain claims, and (iv) the dismissal of any pending litigation. The IP Rights granted were perpetual in nature, extending until the legal expiration date of the related patents. The individual IP Rights are not accounted for as separate performance obligations, as (i) the nature of the promise, within the context of the contract, is to transfer combined items to which the promised IP Rights are inputs and (ii) the Company's promise to transfer each individual IP right described above to the customer is not separately identifiable from other promises to transfer IP Rights in the contract.

Since the promised IP Rights are not individually distinct, the Company combined each individual IP right in the contract into a bundle of IP rights that is distinct, and accounted for all of the IP Rights promised in the contract as a single performance obligation. The IP Rights granted were "functional IP rights" that have significant standalone functionality. Acacia's subsequent activities do not substantively change that functionality and do not significantly affect the utility of the IP to which the licensee has rights. Acacia's operating subsidiaries have no further obligation with respect to the grant of IP Rights, including no express or implied obligation to maintain or upgrade the technology, or provide future support or services. The contracts provide for the grant (i.e., transfer of control) of the licenses, covenants-not-to-sue, releases, and other significant deliverables upon execution of the contract. Licensees legally obtain control of the IP Rights upon execution of the contract. As such, the earnings process is complete and revenue is recognized upon the execution of the contract, when collectability is probable and all other revenue recognition criteria have been met. Revenue contracts generally provide for payment of contractual amounts with 30-90 days of execution of the contract, or the end of the quarter in which the sale or usage occurs for Recurring Revenue Agreements. Contractual payments made by licensees are generally non-refundable.

For sales-based royalties, the Company includes in the transaction price some or all of an amount of estimated variable consideration to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized will not occur when the uncertainty associated with the variable consideration is subsequently resolved. Notwithstanding, revenue is recognized for a sales-based royalty promised in exchange for a license of IP Rights when the later of (i) the subsequent sale or usage occurs, or (ii) the performance obligation to which some or all of the sales-based royalty has been allocated has been satisfied. Estimates are generally based on historical levels of activity, if available.

Revenues from contracts with significant financing components (either explicit or implicit) are recognized at an amount that reflects the price that a licensee would have paid if the licensee had paid cash for the IP Rights when they transfer to the licensee. In determining the transaction price, the Company adjusts the promised amount of consideration for the effects of the time value of money. As a practical expedient, the Company does not adjust the promised amount of consideration for the effects of a significant financing component if the Company expects, at contract inception, that the period between when the entity transfers promised IP Rights to a customer and when the customer pays for the IP Rights will be one year or less.

In general, the Company is required to make certain judgments and estimates in connection with the accounting for revenue contracts with customers. Such areas may include identifying performance obligations in the contract, estimating the timing of satisfaction of performance obligations, determining whether a promise to grant a license is distinct from other promised goods or services, evaluating whether a license transfers to a customer at a point in time or over time, allocating the transaction price to separate performance obligations, determining whether contracts contain a significant financing component, and estimating revenues recognized at a point in time for sales-based royalties.

Revenues were comprised of the following for the periods presented:

	2019	2018
	(In thousands)	
Paid-up Revenue Agreements	\$ 6,343	\$ 100,496
Recurring Revenue Agreements	4,903	13,040
Other Settlements	—	3,470
Sales	—	14,500
	<u>\$ 11,246</u>	<u>\$ 131,506</u>

Refer to "Inventor Royalties and Contingent Legal Expenses" below for information on related direct costs of revenues.

Portfolio Operations. Cost of revenues include the costs and expenses incurred in connection with Acacia's patent licensing and enforcement activities, including inventor royalties paid to original patent owners, contingent legal fees paid to external patent counsel, other patent-related legal expenses paid to external patent counsel, licensing and enforcement related research, consulting and other expenses paid to third-parties and the amortization of patent-related investment costs. These costs are included under the caption "Portfolio operations" in the accompanying consolidated statements of operations.

Inventor Royalties and Contingent Legal Expenses. Inventor royalties are expensed in the consolidated statements of operations in the period that the related revenues are recognized. In certain instances, pursuant to the terms of the underlying inventor agreements, upfront advances paid to patent owners by Acacia's operating subsidiaries are recoverable from future net revenues. Patent costs that are recoverable from future net revenues are amortized over the estimated economic useful life of the related patents, or as the prepaid royalties are earned by the inventor, as appropriate, and the related expense is included in amortization expense in the consolidated statements of operations. Any unamortized upfront advances recovered from net revenues are expensed in the period recovered and included in amortization expense in the consolidated statements of operations. There were no patent acquisition expenses for fiscal year 2019. Cost of revenues for fiscal year 2018 included \$4.0 million of costs to acquire certain patent rights related to revenues recognized in the period.

Contingent legal fees are expensed in the consolidated statements of operations in the period that the related revenues are recognized. In instances where there are no recoveries from potential infringers, no contingent legal fees are paid; however, Acacia's operating subsidiaries may be liable for certain out of pocket legal costs incurred pursuant to the underlying legal services agreement.

Fair Value Measurements. U.S. GAAP defines fair value as the price that would be received for an asset or the exit price that would be paid to transfer a liability in the principal or most advantageous market in an orderly transaction between market participants on the measurement date, and also establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs, where available. The three-level hierarchy of valuation techniques established to measure fair value is defined as follows:

- (i) Level 1 - *Observable Inputs*: Quoted prices in active markets for identical investments;
- (ii) Level 2 - *Pricing Models with Significant Observable Inputs*: Other significant observable inputs, including quoted prices for similar investments, interest rates, credit risk, etc.; and
- (iii) Level 3 - *Unobservable Inputs*: Significant unobservable inputs, including the entity's own assumptions in determining the fair value of investments.

Whenever possible, the Company is required to use observable market inputs (Level 1 - quoted market prices) when measuring fair value. In such cases, the level at which the fair value measurement falls is determined based on the lowest level input that is significant to the fair value measurement. The assessment of the significance of a particular input requires judgment and considers factors specific to the asset or liability being measured. In certain cases, inputs used to measure fair value fall into different levels of the fair value hierarchy. Financial assets and liabilities measured at fair value on a recurring basis were as follows:

	<u>Level 1</u>	<u>Level 2</u> (In thousands)	<u>Level 3</u>
Assets as of December 31, 2019:			
Trading securities - debt	\$ —	\$ 93,843	\$ —
Trading securities - equity	17,140	—	—
Investment at fair value - warrants (Note 6)	—	757	—
Investment at fair value - common stock (Note 6)	743	—	—
Total recurring fair value measurements as of December 31, 2019	<u>\$ 17,883</u>	<u>\$ 94,600</u>	<u>\$ —</u>
Assets as of December 31, 2018:			
Trading securities - debt	\$ —	\$ 33,642	\$ —
Trading securities - equity	3,012	—	—
Investment at fair value - warrants (Note 6)	—	2,064	—
Investment at fair value - common stock (Note 6)	5,395	—	—
Total recurring fair value measurements as of December 31, 2018	<u>\$ 8,407</u>	<u>\$ 35,706</u>	<u>\$ —</u>
Liabilities as of December 31, 2019:			
Profits interest units	\$ —	\$ 591	\$ —
Series A warrants	—	3,568	—
Embedded derivative liability	—	—	17,974
Total liabilities as of December 31, 2019	<u>\$ —</u>	<u>\$ 4,159</u>	<u>\$ 17,974</u>
Liabilities as of December 31, 2018:			
Profits interest units	\$ —	\$ 591	\$ —
Total liabilities as of December 31, 2018	<u>\$ —</u>	<u>\$ 591</u>	<u>\$ —</u>

The following table sets forth a summary of the changes in the estimated fair value of the Company's embedded derivative, which is measured at fair value as a Level 3 liability on a recurring basis:

	Embedded Derivative (In thousands)
Opening balance as of January 1, 2019	\$ —
Issuance of Series A redeemable convertible preferred stock with embedded derivative	21,232
Remeasurement of Series A redeemable convertible preferred stock embedded derivative to fair value	(3,258)
Total Level 3 recurring fair value measurements as of December 31, 2019	<u>\$ 17,974</u>

Cash and Cash Equivalents. Acacia considers all highly liquid, trading securities with original maturities of three months or less when purchased to be cash equivalents. For the periods presented, Acacia's cash equivalents are comprised of investments in AAA rated money market funds that invest in first-tier only securities, which primarily includes: domestic commercial paper, securities issued or guaranteed by the U.S. government or its agencies, U.S. bank obligations, and fully collateralized repurchase agreements. Acacia's cash equivalents are measured at fair value using quoted prices that represent Level 1 inputs.

Long Term Restricted Cash. Long-term restricted cash relates to the proceeds received from the issuance of Series A redeemable convertible preferred stock (the "Series A Redeemable Convertible Preferred Stock") which are held in an escrow account. The amounts are to be released to the Company upon, among other things, (i) the consummation of a suitable investment or acquisition by the Company or (ii) the conversion of Series A Redeemable Convertible Preferred Stock into common stock (see Note 16).

Trading Securities - Debt. Investments in debt securities are reported at fair value on a recurring basis, with related realized and unrealized gains and losses recorded in the statements of operations in other income (expense). Realized and unrealized gains and losses are recorded based on the specific identification method. Interest is included in other income (expense).

Trading Securities - Equity. Investments in equity securities are reported at fair value on a recurring basis, with related realized and unrealized gains and losses in the value of such securities recorded in the statements of operations in other income (expense). Dividend income is included in other income (expense).

Impairment of Investments. Acacia evaluates its investments in marketable securities for potential impairment, employing a methodology on a quarterly basis that considers available quantitative and qualitative evidence. If the cost or carrying value of an investment exceeds its estimated fair value, the Company evaluates, among other factors, general market conditions, credit quality of instrument issuers, the duration and extent to which the fair value is less than cost, and the Company's intent and ability to hold, or plans or ability to sell. Fair value is estimated based on publicly available market information or other estimates determined by management. Investments are considered to be impaired when a decline in fair value is estimated to be other-than-temporary. Acacia reviews impairments associated with its investments in marketable securities and determines the classification of any impairment as temporary or other-than-temporary. An impairment is deemed other-than-temporary unless (a) Acacia has the ability and intent to hold an investment for a period of time sufficient for recovery of its carrying amount and (b) positive evidence indicating that the investment's carrying amount is recoverable within a reasonable period of time outweighs any evidence to the contrary. All available evidence, both positive and negative, is considered to determine whether, based on the weight of such evidence, the carrying amount of the investment is recoverable within a reasonable period of time. For investments classified as available-for-sale, unrealized losses that are other-than-temporary are recognized in the consolidated statements of operations.

Concentration of Credit Risks. Financial instruments that potentially subject Acacia to concentrations of credit risk are cash equivalents, trading securities and accounts receivable. Acacia places its cash equivalents and trading securities primarily in highly rated money market funds and investment grade marketable securities. Cash and cash equivalents are also invested in deposits with certain financial institutions and may, at times, exceed federally insured limits. Acacia has not experienced any significant losses on its deposits of cash and cash equivalents.

Three licensees individually accounted for 43%, 22% and 15%, respectively, of revenues recognized during the year ended December 31, 2019. Three licensees individually accounted for 45%, 17% and 17%, respectively, of revenues recognized during the year ended December 31, 2018. Two licensees individually represented approximately 70% and 17%, respectively, of accounts receivable at December 31, 2019. Four licensees individually represented approximately 38%, 36%, 12% and 11%, respectively, of accounts receivable at December 31, 2018.

For 2019 and 2018, 39% and 26%, respectively, of revenues were attributable to licensees domiciled in foreign jurisdictions, based on the jurisdiction of the entity obligated to satisfy payment obligations pursuant to the applicable revenue arrangement. The Company does not have any material foreign operations.

Acacia performs credit evaluations of its licensees with significant receivable balances, if any, and has not experienced any significant credit losses. Accounts receivable are recorded at the executed contract amount and generally do not bear interest. Collateral is not required. An allowance for doubtful accounts may be established to reflect the Company's best estimate of probable losses inherent in the accounts receivable balance, and is reflected as a contra-asset account on the balance sheet and a charge to operating expenses in the statements of operations for the applicable period. The allowance is determined based on known troubled accounts, historical experience, and other currently available evidence. There was no allowance for doubtful accounts established for the periods presented.

Fair Value of Financial Instruments. The carrying value of cash and cash equivalents, restricted cash, accounts receivables, and current liabilities approximates their fair values due to their short-term maturities.

Property and Equipment. Property and equipment are recorded at cost. Major additions and improvements that materially extend useful lives of property and equipment are capitalized. Maintenance and repairs are charged against the results of operations as incurred. When these assets are sold or otherwise disposed of, the asset and related depreciation are relieved, and any gain or loss is included in the consolidated statements of operations for the period of sale or disposal. Depreciation and amortization is computed on a straight-line basis over the following estimated useful lives of the assets:

Furniture and fixtures	3 to 5 years
Computer hardware and software	3 to 5 years
Leasehold improvements	2 to 5 years (Lesser of lease term or useful life of improvement)

Rental payments on operating leases are charged to expense in the consolidated statements of operations on a straight-line basis over the lease term.

Patents. Patents include the cost of patents or patent rights (hereinafter, collectively "patents") acquired from third-parties or obtained in connection with business combinations. Patent costs are amortized utilizing the straight-line method over their remaining economic useful lives, ranging from one to five years.

Leases. The Company adopted ASC 842 as of January 1, 2019, electing the practical expedient approaches. The primary impact of adopting ASC 842 for the Company was the recognition in the consolidated balance sheet of certain lease-related assets and liabilities for operating leases with terms longer than 12 months. Such amounts were not previously accounted for in the Company's consolidated balance sheets. The Company's leases primarily consist of facility leases which are classified as operating leases. The Company assesses whether an arrangement contains a lease at inception. The Company recognizes a lease liability to make contractual payments under all leases with terms greater than twelve months and a corresponding right-of-use asset, representing its right to use the underlying asset for the lease term. Upon adoption of ASC 842 on January 1, 2019, the carrying value of certain lease related liabilities for its excess of lease payments over anticipated sublease income existing at that date, was offset against the related right-of-use assets. Lease expense is recognized on a straight-line basis over the lease term.

Investments at Fair Value. On an individual investment basis, Acacia may elect to account for investments in companies where the Company has the ability to exercise significant influence over operating and financial policies of the investee, at fair value. If the fair value option is applied to an investment that would otherwise be accounted for under the equity method of accounting, it is applied to all of the financial interests in the same entity that are eligible items (i.e., common stock and warrants).

Other Investments. Equity investments in common stock and in-substance common stock without readily determinable fair values in companies over which the Company has the ability to exercise significant influence, are accounted for using the equity method of accounting. Acacia includes its proportionate share of earnings and/or losses of its equity method investees in equity in earnings (losses) of investee in the consolidated statements of operations.

Investments in preferred stock with substantive liquidation preferences are accounted for at cost, (subject to impairment considerations, as described below, if any), as adjusted for the impact of changes resulting from observable price changes in orderly transactions for identical or similar investments of the same issuer. In-substance common stock is an investment in an entity that has risk and reward characteristics that are substantially similar to that entity's common stock. An investment in preferred stock with substantive liquidation preferences over common stock, is not substantially similar to common stock, and therefore is not considered in-substance common stock. A liquidation preference is substantive if the investment has a stated liquidation preference that is significant, from a fair value perspective, in relation to the purchase price of the investment. A liquidation preference in an investee that has sufficient subordinated equity from a fair value perspective is substantive because, in the event of liquidation, the investment will not participate in substantially all of the investee's losses, if any.

The initial determination of whether an investment is substantially similar to common stock is made on the initial date of investment if the Company has the ability to exercise significant influence over the operating and financial policies of the investee. That determination is reconsidered if (i) contractual terms of the investment are changed, (ii) there is a significant change in the capital structure of the investee, including the investee's receipt of additional subordinated financing, or (iii) the Company obtains an additional interest in an investment, resulting in the method of accounting for the cumulative interest being based on the characteristics of the investment at the date at which the Company obtains the additional interest. Refer to Note 6 for additional information.

Impairment of Other Investments. Acacia reviews its investments quarterly for indicators of other-than-temporary impairment. This determination requires significant judgment. In making this judgment, Acacia considers available quantitative and qualitative evidence in evaluating potential impairment of its investments. If the cost of an investment exceeds its fair value, Acacia evaluates, among other factors, general market conditions and the duration and extent to which the fair value is less than cost. Acacia also considers specific adverse conditions related to the financial health of and business outlook for the investee, including industry and sector performance, changes in technology, and operational and financing cash flow factors. Once a decline in fair value is determined to be other-than-temporary, an impairment charge is recorded in the consolidated statements of operations and a new cost basis in the investment is established.

Impairment of Long-lived Assets. Acacia reviews long-lived assets and intangible assets for potential impairment annually (quarterly for patents) and when events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. In the event the expected undiscounted future cash flows resulting from the use of the asset is less than the carrying amount of the asset, an impairment loss is recorded equal to the excess of the asset's carrying value over its fair value. If an asset is determined to be impaired, the loss is measured based on quoted market prices in active markets, if available. If quoted market prices are not available, the estimate of fair value is based on various valuation techniques, including a discounted value of estimated future cash flows. In the event that management decides to no longer allocate resources to a patent portfolio, an impairment loss equal to the remaining carrying value of the asset is recorded. Refer to Note 5 for additional information.

Fair value is generally estimated using the "Income Approach," focusing on the estimated future net income-producing capability of the patent portfolios over the estimated remaining economic useful life. Estimates of future after-tax cash flows are converted to present value through "discounting," including an estimated rate of return that accounts for both the time value of money and investment risk factors. Estimated cash inflows are typically based on estimates of reasonable royalty rates for the applicable technology, applied to estimated market data. Estimated cash outflows are based on existing contractual obligations, such as contingent legal fee and inventor royalty obligations, applied to estimated license fee revenues, in addition to other estimates of out-of-pocket expenses associated with a specific patent portfolio's licensing and enforcement program. The analysis also contemplates consideration of current information about the patent portfolio including, status and stage of litigation, periodic results of the litigation process, strength of the patent portfolio, technology coverage and other pertinent information that could impact future net cash flows.

Contingent Liabilities. The Company, from time to time, is involved in certain legal proceedings. Based upon consultation with outside counsel handling its defense in these matters and the Company's analysis of potential outcomes, if the Company determines that a loss arising from such matters is probable and can be reasonably estimated, an estimate of the contingent liability is recorded in its consolidated financial statements. If only a range of estimated loss can be determined, an amount within the range that, based on estimates, assumptions and judgments, reflects the most likely outcome, is recorded as a contingent liability in the consolidated financial statements. In situations where none of the estimates within the estimated range is a better estimate of probable loss than any other amount, the Company records the low end of the range. Any such accrual would be charged to expense in the appropriate period. Litigation expenses for these types of contingencies are recognized in the period in which the litigation services were provided.

Certain of Acacia's operating subsidiaries are often required to engage in litigation to enforce their patents and patent rights. In connection with any of Acacia's operating subsidiaries' patent enforcement actions, it is possible that a defendant may request and/or a court may rule that an operating subsidiary has violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against Acacia or its operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material, and if required to be paid by Acacia or its operating subsidiaries, could materially harm the Company's operating results and financial position.

Stock-Based Compensation. The compensation cost for all stock-based awards is measured at the grant date, based on the fair value of the award, and is recognized as an expense on a straight-line basis over the employee's requisite service period (generally the vesting period of the equity award). The fair value of restricted stock and restricted stock units awards is determined by the product of the number of shares or units granted and the grant date market price of the underlying common stock. The fair value of each option award is estimated on the date of grant using a Black-Scholes option-pricing model. Forfeitures are accounted for as they occur.

No stock options were granted during the year ended December 31, 2019. The fair values of stock options granted during the year ended December 31, 2018 were estimated using the Black-Scholes option-pricing model, based on the following weighted-average assumptions:

	For the Year Ended December 31, 2018
Risk-free interest rate	2.26%
Term	4.37
Volatility	51%
Dividend yield	—%

Due to a lack of sufficient historical stock option exercise experience, the Company utilized the simplified method for estimating the expected term. Expected volatility is based on the historical volatility of the Company's stock for the length of time corresponding to the expected term of the option. The risk-free interest rate is based on the U.S. treasury yield curve on the grant date for the expected term of the option.

Restricted stock units awards with market-based vesting conditions vest based upon the Company achieving specified stock price targets over a three-year period. The effect of a market condition is reflected in the estimate of the grant-date fair value of the options utilizing a Monte Carlo valuation technique. Compensation cost is recognized with a market-based vesting condition provided that the requisite service is rendered, regardless of when, if ever, the market condition is satisfied. Assumptions utilized in connection with the Monte Carlo valuation technique included: estimated risk-free interest rate of 1.38 percent; term of 3.00 years; expected volatility of 38 percent; and expected dividend yield of 0 percent. The risk-free interest rate was determined based on the yields available on U.S. Treasury zero-coupon issues. The expected stock price volatility was determined using historical volatility. The expected dividend yield was based on expectations regarding dividend payments.

Profits Interest Units ("Units") are accounted for in accordance with Accounting Standards Codification ("ASC") 718-10, "Compensation - Stock Compensation." The Units vest as described at Note 9, and therefore, the vesting conditions do not meet the definition of service, market or performance conditions, as defined in ASC 718. As such, the Units are classified as liability awards. Liability classified awards are measured at fair value on the grant date and re-measured each reporting period at fair value until the award is settled. Compensation expense is adjusted each reporting period for changes in fair value prorated for the portion of the requisite service period rendered. Initially, compensation expense was recognized on a straight-line basis over the employee's requisite service period (generally the vesting period of the equity award) which was five years. Upon full vesting of the award, which occurred during the three months ended September 30, 2017, previously unrecognized compensation expense was immediately recognized in the period, and will continue to be fully recognized for any changes in fair value, until the Units are settled. The Company has a purchase option to purchase the vested Units that are not otherwise forfeited after termination of continuous service. The exercise price of the purchase option is the fair market value of the Units on the date of termination of continuous service. At each reporting date, the value of the Units that are subject to the purchase option will be the measured at the fair value on the termination date. Non-cash stock compensation expense related to the Units is reflected in general and administrative expense in the accompanying consolidated statements of operations.

Series A Warrants. The fair value of the Series A warrants (the "Series A Warrants") is estimated using a Black-Scholes option-pricing model. The fair value of the Series A Warrants as of December 31, 2019 was estimated based on the following assumptions: volatility of 30 percent, risk-free rate of 1.85 percent, term of 7.79 years and a dividend yield of 0 percent.

Embedded derivatives. Embedded derivatives that are required to be bifurcated from their host contract are valued separately from host instrument. A binomial lattice framework is used to estimate the fair value of the embedded derivative in the Series A Redeemable Convertible Preferred Stock (see Note 16). The binomial model utilizes the Tsiveriotis and Fernandes ("TF") implementation in which a convertible instrument is split into two separate components: a cash-only component which is subject to the selected risk-adjusted discount rate and an equity component which is subject only to the risk-free rate. The model considers the (i) implied volatility of the value of our common stock, (ii) appropriate risk-free interest rate, (iii) credit spread, (iv) dividend yield, (v) dividend accrual (and a step-up in rates), and (vi) event probabilities of the various conversion and redemption scenarios.

The implied volatility of the Company's common stock is estimated based on a haircut applied to the historical volatility. A volatility haircut is a concept used to describe a commonly observed occurrence in which the volatility implied by market prices involving options, warrants, and convertible debt is lower than historical actual realized volatility. The assumed base case term used in the valuation model is the period remaining until November 15, 2027 (the maturity date). The risk-free interest rate is based on the yield on the U.S. Treasury with a remaining term equal to the expected term of the conversion and early redemption options. The significant assumptions utilized in the Company's valuation of the embedded derivative at December 31, 2019 are as follows: volatility of 30 percent, risk-free rate of 1.86 percent, a credit spread of 25 percent and a dividend yield of 0 percent. The fair value measurement of the embedded derivative is sensitive to these assumptions and changes in these assumptions could result in a materially different fair value measurement.

Income Taxes. Income taxes are accounted for using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in Acacia's consolidated financial statements or consolidated income tax returns. A valuation allowance is established to reduce deferred tax assets if all, or some portion, of such assets will more than likely not be realized, or if it is determined that there is uncertainty regarding future realization of such assets.

Under U.S. generally accepted accounting principles, a tax position is a position in a previously filed tax return or a position expected to be taken in a future tax filing that is reflected in measuring current or deferred income tax assets and liabilities. Tax positions are recognized only when it is more likely than not (likelihood of greater than 50%), based on technical merits, that the position will be sustained upon examination. Tax positions that meet the more likely than not threshold are measured using a probability weighted approach as the largest amount of tax benefit that is greater than 50% likely of being realized upon settlement.

Segment Reporting. Acacia uses the management approach, which designates the internal organization that is used by management for making operating decisions and assessing performance as the basis of Acacia's reportable segments. Acacia's patent licensing and enforcement business constitutes its single reportable segment.

Use of Estimates. The preparation of financial statements in conformity with generally accepted accounting principles in the United States of America requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates. Acacia believes that, of the significant accounting policies described herein, the accounting policies associated with revenue recognition, the valuation of the equity instruments discussed at Note 6, the valuation of Series A redeemable convertible preferred stock, Series A warrants and embedded derivatives, stock-based compensation expense, impairment of patent-related intangible assets, the determination of the economic useful life of amortizable intangible assets, income taxes and valuation allowances against net deferred tax assets, require its most difficult, subjective or complex judgments.

Loss Per Share. For periods in which the Company generates net income, the Company computes earnings per share attributable to common stockholders using the two-class method required for capital structures that include participating securities. Under the two-class method, securities that participate in non-forfeitable dividends, such as the Company's outstanding unvested restricted stock and Series A Redeemable Convertible Preferred Stock, are considered participating securities and are allocated a portion of the Company's earnings. For periods in which the Company generates a net loss, net losses are not allocated to holders of the Company's participating securities as the security holders are not contractually obligated to share in the Company's losses.

For the periods presented, due to the Company's net loss, the Company did not apply the two-class method to allocate earnings to the participating securities. Basic net loss per share of common stock is computed by dividing net loss attributable to common stockholders by the weighted average number of shares of common stock outstanding for the period. Diluted net loss per share of common stock is computed by dividing net loss attributable to common stockholders by the weighted average number of common and dilutive common equivalent shares outstanding for the period using the treasury stock method or the as-converted method. Potentially dilutive common stock equivalents consist of stock options, restricted stock units, unvested restricted stock, Series A Redeemable Convertible Preferred Stock, and Series A Warrants.

The following table presents the calculation of basic and diluted loss per share of common stock:

	2019	2018
	(In thousands, except percentage change values)	
Basic		
Numerator:		
Net loss attributable to Acacia Research Corporation	(17,115)	(105,029)
Accretion of Series A Redeemable Convertible Preferred Stock	(307)	-
Net loss attributable to common stockholders - basic	<u>(17,422)</u>	<u>(105,029)</u>
Denominator:		
Weighted-average shares used in computing net loss per share attributable to common stockholders - basic	49,764,002	49,969,062
Basic net loss per share of common stock	<u>\$ (0.35)</u>	<u>\$ (2.10)</u>
Diluted		
Numerator:		
Net loss attributable to Acacia Research Corporation	(17,115)	(105,029)
Mark-to-market adjustment for preferred stock embedded derivative	(3,258)	-
Net loss attributable to common stockholders - diluted	<u>(20,373)</u>	<u>(105,029)</u>
Denominator:		
Weighted-average shares used in computing net loss per share attributable to common stockholders - basic	49,764,002	49,969,062
Effect of potentially dilutive securities: Series A preferred stock	1,132,771	-
Weighted-average shares used in computing net loss per share attributable to common stockholders - diluted	50,896,773	49,969,062
Diluted net loss per share of common stock	<u>\$ (0.40)</u>	<u>\$ (2.10)</u>

As the Company reported a net loss for the years ended December 31, 2019 and 2018, all potentially dilutive shares of common stock other than those associated with the Series A Redeemable Convertible Preferred Stock have been excluded from the calculation of diluted net loss per share of common stock because including such instruments would be anti-dilutive.

Treasury Stock. Repurchases of the Company's outstanding common stock are accounted for using the cost method. The applicable par value is deducted from the appropriate capital stock account on the formal or constructive retirement of treasury stock. Any excess of the cost of treasury stock over its par value is charged to additional paid-in capital, and reflected as Treasury Stock on the consolidated balance sheets.

3. TRADING SECURITIES

Trading securities for the periods presented were comprised of the following:

Security Type	Cost	Gross Unrealized Gain	Gross Unrealized Loss	Fair Value
	(In thousands)			
December 31, 2019:				
Trading securities - debt	\$ 93,712	\$ 143	\$ (12)	\$ 93,843
Trading securities - equity	17,674	211	(745)	17,140
	<u>\$ 111,386</u>	<u>\$ 354</u>	<u>\$ (757)</u>	<u>\$ 110,983</u>
December 31, 2018:				
Trading securities - debt	\$ 33,643	\$ 18	\$ (19)	\$ 33,642
Trading securities - equity	3,389	27	(404)	3,012
	<u>\$ 37,032</u>	<u>\$ 45</u>	<u>\$ (423)</u>	<u>\$ 36,654</u>

Trading securities as of December 31, 2019 and 2018, were comprised of investments in corporate bonds (debt securities) and investments in equity securities of publicly held companies (equity securities). For the year ended December 31, 2019, proceeds from the sale and maturity of debt securities and equity securities were \$49,751,000 and \$25,339,000, respectively. For the year ended December 31, 2018, proceeds from the sale and maturity of debt securities and equity securities were \$65,144,000 and \$1,496,000, respectively.

4. ACCRUED EXPENSES

Accrued expenses consist of the following at December 31, 2019 and 2018:

	2019	2018
	(In thousands)	
Accrued litigation liabilities	\$ 6,181	\$ 3,803
Accrued consulting and other professional fees	470	-
Foreign taxes payable	-	374
State income taxes payable	27	-
Short-term lease liability	435	-
Other accrued liabilities	152	122
	<u>\$ 7,265</u>	<u>\$ 4,299</u>

5. PATENTS

Acacia's only identifiable intangible assets are patents and patent rights, with estimated remaining economic useful lives ranging from one to five years. For all periods presented, all of Acacia's identifiable intangible assets were subject to amortization. The gross carrying amounts and accumulated amortization related to investments in intangible assets as of December 31, 2019 and 2018 are as follows (in thousands):

	2019	2018
Gross carrying amount - patents	\$ 330,588	\$ 326,167
Accumulated amortization - patents ⁽¹⁾	(322,774)	(319,580)
Patents, net	<u>\$ 7,814</u>	<u>\$ 6,587</u>

⁽¹⁾ Includes patent impairment charges for the applicable periods.

The weighted-average remaining estimated economic useful life of Acacia's patents and patent rights is 4 years. Scheduled annual aggregate amortization expense is estimated to be \$2,555,000 in 2020, \$1,695,000 in 2021, \$1,695,000 in 2022, \$1,620,000 in 2023 and \$249,000 in 2024.

Acacia did not record charges related to the impairment of patent-related intangible assets for the year ended December 31, 2019. Acacia recorded impairment of patent-related intangible asset charges totaling \$28,210,000 for the year ended December 31, 2018. The impairment charges related to impairments of patent portfolios due to a reduction in expected estimated future net cash flows and certain patent portfolios that management determined it would no longer allocate future resources to in connection with the licensing and enforcement of such portfolios, due primarily to adverse litigation outcomes, potential prior art related complexities and/or the overall determination that future resources would be allocated to other licensing and enforcement programs with higher potential return profiles. The impairment charges for the periods presented consisted of the excess of the asset's carrying value over its estimated fair value.

For the year ended December 31, 2018, pursuant to the terms of the respective inventor agreements, certain Acacia operating subsidiaries elected to terminate or sell their rights to patent portfolios, resulting in the acceleration of amortization expense for the patent-related assets totaling \$8,307,000. There is no accelerated amortization or sales for patent-related assets for the year ended December 31, 2019.

6. INVESTMENTS

Investment at Fair Value

During 2016 and 2017, Acacia made certain investments in Veritone, Inc. ("Veritone"). As a result of these transactions, Acacia received an aggregate total of 4,119,521 shares of Veritone common stock and warrants to purchase a total of 1,120,432 shares of Veritone common stock at an exercise price of \$13.61 per share expiring between 2020 and 2027. During the year ended December 31, 2018, Acacia sold 2,700,000 shares Veritone common stock and recorded a realized loss of \$19.1 million. During the year ended December 31, 2019, Acacia sold 1,121,071 shares Veritone common stock and recorded a realized loss of \$9.2 million.

At December 31, 2019, the fair value of the 298,449 shares of Veritone common stock owned by Acacia totaled \$743,000. At December 31, 2019, the fair value of the 1,120,432 common stock purchase warrants held by Acacia totaled \$757,000. At December 31, 2018, the fair value of the 1,419,521 shares of Veritone common stock owned by Acacia totaled \$5,395,000. At December 31, 2018, the fair value of the 1,120,432 common stock purchase warrants held by Acacia totaled \$2,064,000.

Changes in the fair value of Acacia's investment in Veritone are recorded as unrealized gains or losses in the consolidated statements of operations. For the year ended December 31, 2019, and 2018, the accompanying consolidated statements of operations reflected the following:

	2019	2018
	(In thousands)	
Change in fair value of investment, warrants	\$ (1,308)	\$ (11,895)
Change in fair value of investment, common stock	11,207	(47,208)
Loss on sale of investment, common stock	(9,230)	(19,095)
Net realized and unrealized gain (loss) on investment at fair value	<u>\$ 669</u>	<u>\$ (78,198)</u>

Miso Robotics Investment

In June 2017, Acacia made an investment in the Series A Preferred financing round for Miso Robotics, Inc. ("Miso Robotics"), an innovative leader in robotics and artificial intelligence solutions, totaling \$2,250,000, acquiring a 22.6% ownership interest in Series A preferred stock of Miso Robotics, and one board seat. In February 2018, Acacia made an additional equity investment in the Series B Preferred financing round for Miso Robotics totaling \$6,000,000, increasing its ownership interest (Series B preferred stock) in Miso Robotics to approximately 30%, and acquiring an additional board seat. As of June 30, 2019, Acacia recorded an impairment of \$8.2 million for its investment in Miso Robotics. In September 2019, Acacia received a cash payment of \$2.0 million upon the sale of its entire investment, and therefore relinquished its ownership interest in Miso Robotics.

7. STOCKHOLDERS' EQUITY

Repurchases of Common Stock. In February 2018, Acacia's Board of Directors authorized the repurchase of up to \$20,000,000 of the Company's outstanding common stock in open market purchases or private purchases, from time to time, in amounts and at prices to be determined by the Board of Directors at its discretion (the "Stock Repurchase Program"). On August 5, 2019, Acacia's Board of Directors approved a new stock repurchase program, which authorized the purchase of up to \$10.0 million of the Company's common stock through open market purchases, through block trades, through 10b5-1 plans, or by means of private purchases, from time to time, through July 31, 2020.

In determining whether or not to repurchase any shares of Acacia's common stock, Acacia's Board of Directors consider such factors as the impact of the repurchase on Acacia's cash position, as well as Acacia's capital needs and whether there is a better alternative use of Acacia's capital. Acacia has no obligation to repurchase any amount of its common stock under the Stock Repurchase Program. Repurchases to date were made in the open market in compliance with applicable SEC rules. The authorization to repurchase shares presented an opportunity to reduce the outstanding share count and enhance stockholder value. The repurchased shares are expected to be retired. Monthly stock repurchases for the periods presented, all of which were purchased as part of a publicly announced plan or program, were as follows:

	Total Number of Shares Purchased	Average Price paid per Share	Approximate Dollar Value of Shares that May Yet be Purchased under the Program	Plan Expiration Date
May 1, 2018 - May 30, 2018	1,190,420	\$ 3.89	\$ 15,366,000	February 28, 2019
Totals for 2018	<u>1,190,420</u>	<u>\$ 3.89</u>		

Tax Benefits Preservation Plan. On March 12, 2019, Acacia's Board of Directors announced that it had unanimously approved the adoption of a Tax Benefits Preservation Plan (the "Plan"). The purpose of the Plan is to protect the Company's ability to utilize potential tax assets, such as net operating loss carryforwards and tax credits to offset potential future taxable income.

The Plan is designed to reduce the likelihood that the Company will experience an ownership change by discouraging (i) any person or group from acquiring beneficial ownership of 4.9% or more of the Company's outstanding common stock and (ii) any existing stockholders who, as of the time of the first public announcement of the adoption of the Plan, beneficially own more than 4.9% of the Company's then-outstanding shares of the Company's common stock from acquiring additional shares of the Company's common stock (subject to certain exceptions). There is no guarantee, however, that the Plan will prevent the Company from experiencing an ownership change.

In connection with the adoption of the Plan, Acacia's Board of Directors authorized and declared a dividend distribution of one right for each outstanding share of the Company's common stock to stockholders of record at the close of business on March 16, 2019. On or after the distribution date, each right would initially entitle the holder to purchase one one-thousandth of a share of the Company's Series B Junior Participating Preferred Stock, \$0.001 par value for a purchase price of \$12.00.

The Company also has a provision in its Amended and Restated Certificate of Incorporation, as amended (the "Charter Provision") which generally prohibits transfers of its common stock that could result in an ownership change. Like the Plan, the purpose of the Charter Provision is to protect the Company's ability to utilize potential tax assets, such as net operating loss carryforwards and tax credits to offset potential future taxable income. The Charter Provision was approved by the Company's stockholders on July 15, 2019.

8. INCOME TAXES

Acacia's income tax benefit (expense) for the fiscal periods presented consisted of the following:

	2019	2018
	(in thousands)	
Current:		
Federal	\$ -	\$ -
State	(34)	(87)
Foreign	1,858	(1,092)
Total current	1,824	(1,179)
Deferred:		
Federal	-	-
State	-	-
Total deferred	-	-
Income tax benefit (expense)	\$ 1,824	\$ (1,179)

The tax effects of temporary differences and carryforwards that give rise to significant portions of deferred tax assets and liabilities consist of the following at December 31, 2019 and 2018:

	2019	2018
	(in thousands)	
Deferred tax assets:		
Net operating loss and capital loss carryforwards and credits	\$ 112,280	\$ 104,862
Unrealized loss on investments held at fair value	538	2,455
Stock compensation	358	1,365
Fixed assets and intangibles	1,316	3,330
Basis of investments in affiliates	300	286
Accrued liabilities and other	631	208
State taxes	25	26
Total deferred tax assets	115,448	112,532
Valuation allowance	(115,077)	(112,514)
Total deferred tax assets, net of valuation allowance	371	18
Deferred tax liabilities:		
ROU Asset	(347)	-
Other	(24)	(18)
Total deferred tax liabilities	(371)	(18)
Net deferred tax assets (liabilities)	\$ -	\$ -

A reconciliation of the federal statutory income tax rate and the effective income tax rate is as follows:

	2019	2018
Statutory federal tax rate - (benefit) expense	21%	21%
State income and foreign taxes, net of federal tax effect	7%	(1)%
Foreign tax credit	-%	-%
Noncontrolling interests in operating subsidiaries	-%	-%
Nondeductible permanent items	1%	(1)%
Change in tax rate	-%	-%
Expired capitalized loss	(2)%	-%
Valuation allowance	(13)%	(20)%
Other	(4)%	-%
	10%	(1)%

For the periods presented, the Company recorded full valuation allowances against its net deferred tax assets due to uncertainty regarding future realization pursuant to guidance set forth in ASC 740, "Income Taxes." In future periods, if the Company determines it will more likely than not be able to realize certain of these amounts, the applicable portion of the benefit from the release of the valuation allowance will generally be recognized in the statements of operations in the period the determination is made.

At December 31, 2019, Acacia had U.S. federal and state income tax net operating loss carryforwards ("NOLs") totaling approximately \$253,824,000 and \$19,683,000, respectively. For federal income tax purposes, our NOL carryovers generated for tax years beginning before January 1, 2018 will begin to expire in 2026. Pursuant to the Tax Cuts and Jobs Act enacted by the U.S. federal government in December 2017, for federal income tax purposes, NOL carryovers generated for our tax years beginning January 1, 2018 can be carried forward indefinitely but will be subject to a taxable income limitation. For state income tax purposes, our NOLs will expire between 2028 and 2039. Our capital loss carryovers totaled \$23,652,000 at December 31, 2019, expiring between 2025 and 2029.

As of December 31, 2019, Acacia had approximately \$51,508,000 of foreign tax credits, expiring between 2020 and 2026. In general, foreign taxes withheld may be claimed as a deduction on future U.S. corporate income tax returns, or as a credit against future U.S. income tax liabilities, subject to certain limitations.

Tax expense (benefit) for the periods presented primarily reflects foreign taxes withheld and refunded on revenue agreements executed with licensees in foreign jurisdictions and other state taxes. Excluding the impact of the change in valuation allowance, annual effective tax rates were 23% for fiscal year 2019 and 19% for fiscal year 2018. Results for fiscal year 2019 included an unrealized loss on Acacia's investment in Veritone which created a deferred tax asset totaling approximately \$538,000. Results for fiscal year 2018 included an unrealized loss on Acacia's investment in Veritone which created a deferred tax asset totaling approximately \$2,455,000. The 2017 deferred tax liability was reversed in fiscal year 2018 as a result of the 2018 unrealized loss on Acacia's investment in Veritone and the realized loss on the sale of Veritone common stock.

Acacia is subject to taxation in the U.S. and in various state jurisdictions and incurs foreign tax withholdings on revenue agreements with licensees in certain foreign jurisdictions. With no material exceptions, Acacia is no longer subject to U.S. federal or state examinations by tax authorities for years before 2011. The California Franchise Tax Board is auditing the 2011 through 2016 California combined income tax returns. The California Franchise Tax Board has proposed adjustments for 2011 and 2012 that, if expensed, would not be material to the consolidated statements of operations for the periods presented. We have protested these adjustments.

At December 31, 2019 and 2018, the Company had total unrecognized tax benefits of approximately \$731,000 and \$816,000, respectively. No interest and penalties have been recorded for the unrecognized tax benefits for the periods presented. At December 31, 2019, if recognized, approximately \$731,000 of tax benefits, net of valuation allowance, would impact the Company's effective tax rate. The Company does not expect that the liability for unrecognized tax benefits will change significantly within the next 12 months.

Acacia recognizes interest and penalties with respect to unrecognized tax benefits in income tax expense (benefit). Acacia has identified no uncertain tax position for which it is reasonably possible that the total amount of unrecognized tax benefits will significantly increase or decrease within 12 months.

9. EQUITY-BASED INCENTIVE PLANS

Stock-Based Incentive Plans

The 2013 Acacia Research Corporation Stock Incentive Plan (“2013 Plan”) and the 2016 Acacia Research Corporation Stock Incentive Plan (“2016 Plan”) (collectively, the “Plans”) were approved by the stockholders of Acacia in May 2013 and June 2016, respectively. All Plans allow grants of stock options, stock awards and performance shares with respect to Acacia common stock to eligible individuals, which generally includes directors, officers, employees and consultants. Except as noted below, the terms and provisions of the Plans are identical in all material respects.

Acacia’s compensation committee administers the discretionary option grant and stock issuance programs. The compensation committee determines which eligible individuals are to receive option grants or stock issuances under those programs, the time or times when the grants or issuances are to be made, the number of shares subject to each grant or issuance, the status of any granted option as either an incentive stock option or a non-statutory stock option under the federal tax laws, the vesting schedule to be in effect for the option grant or stock issuance and the maximum term for which any granted option is to remain outstanding. The exercise price of options is generally equal to the fair market value of Acacia’s common stock on the date of grant. Options generally begin to be exercisable six months to one year after grant and generally expire seven to ten years after grant. Stock options with time-based vesting generally vest over two to three years and restricted shares with time based vesting generally vest in full after one to three years (generally representing the requisite service period). The Plans terminate no later than the tenth anniversary of the approval of the incentive plans by Acacia’s stockholders.

The Plans provide for the following separate programs:

- *Discretionary Option Grant Program.* Under the discretionary option grant program, Acacia’s compensation committee may grant (1) non-statutory options to purchase shares of common stock to eligible individuals in the employ or service of Acacia or its subsidiaries (including employees, non-employee board members and consultants) at an exercise price not less than 85% of the fair market value of those shares on the grant date, and (2) incentive stock options to purchase shares of common stock to eligible employees at an exercise price not less than 100% of the fair market value of those shares on the grant date (not less than 110% of fair market value if such employee actually or constructively owns more than 10% of Acacia’s voting stock or the voting stock of any of its subsidiaries).
- *Automatic Option Grant Program.* Through fiscal year 2016, each non-employee director received restricted stock units or stock options for the number of shares determined by dividing the annual retainer by the grant date fair value of Acacia’s common stock on the grant date. In addition, each new non-employee director received restricted stock units or stock options for the number of shares determined by dividing the annual Board of Directors retainer by the grant date fair value of Acacia’s common stock on the commencement date. These restricted stock units and stock options vested in a series of twelve quarterly installments over the three year period following the grant date, subject to immediate acceleration upon a change in control. Acacia will deliver the unrestricted shares corresponding to the vested restricted stock units within thirty (30) days after the first to occur of the following events: (i) the fifth (5th) anniversary of the grant date; or (ii) termination of the non-employee director’s service as a member of the Company’s Board of Directors. The non-employee directors do not have any rights, benefits or entitlements with respect to any shares unless and until the shares have been delivered.
- *Stock Issuance Program.* Under the stock issuance program, eligible individuals may be issued shares of common stock directly, upon the attainment of performance milestones or the completion of a specified period of service or as a bonus for past services. Under this program, the purchase price for the shares shall not be less than 100% of the fair market value of the shares on the date of issuance, and payment may be in the form of cash or past services rendered. The eligible individuals receiving restricted stock awards (“RSA”) shall have full stockholder rights with respect to any shares of Common Stock issued to them under the Stock Issuance Program, whether or not their interest in those shares is vested. Accordingly, the eligible individuals shall have the right to vote such shares and to receive any regular cash dividends paid on such shares. The eligible individuals receiving restricted stock units (“RSU”) shall not have full stockholder rights until they vest.

The number of shares of Common Stock initially reserved for issuance under the 2013 Plan was 4,750,000 shares. No new additional shares will be added to the 2013 Plan without security holder approval (except for shares subject to outstanding awards that are forfeited or otherwise returned to the 2013 Plan). The stock issuable under the 2013 Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market. In June 2016, 625,390 shares of common stock available for issuance under the 2013 Plan were transferred into the 2016 Plan. At December 31, 2019, there were 1,024,419 shares available for grant under the 2013 Plan.

The number of shares of Common Stock initially reserved for issuance under the 2016 Plan was 4,500,000 shares plus 625,390 shares of common stock available for issuance under the 2013 Plan, as of the effective date of the Plan. At December 31, 2019, there were 4,067,891 shares available for grant under the 2016 Plan.

Upon the exercise of stock options, the granting of restricted stock, or the delivery of shares pursuant to vested restricted stock units, it is Acacia's policy to issue new shares of common stock. Acacia's Board of Directors may amend or modify the Plans at any time, subject to any required stockholder approval. As of December 31, 2019, there are 6,875,564 shares of common stock reserved for issuance under the Plans.

Stock-based award grant activity for the periods presented was as follows:

	2019		2018	
	Shares	Aggregate fair value (in thousands)	Shares	Aggregate fair value (in thousands)
Restricted stock awards with time-based service conditions	777,000	\$ 2,332	102,000	\$ 386
Restricted stock units with market-based service conditions	900,000	\$ 1,280	–	–
Stock options with time-based service vesting conditions	–	–	930,000	1,588
Total incentive awards granted	1,677,000	\$ 3,612	1,032,000	\$ 1,974

The following table summarizes stock option activity for the Plans for the year ended December 31, 2019:

	Weighted-Average		Remaining Contractual Term	Aggregate Intrinsic Value
	Options	Exercise Price		
Outstanding at December 31, 2018	3,509,000	\$ 4.96		
Granted	–	\$ –		
Exercised	(25,000)	\$ 3.12		
Expired/forfeited	(3,158,000)	\$ 5.04		
Outstanding at December 31, 2019	326,000	\$ 4.38	4.4 years	\$ –
Vested	281,000	\$ 4.45	3.9 years	\$ –
Exercisable at December 31, 2019	281,000	\$ 4.45	3.9 years	\$ –

The aggregate intrinsic value of options exercised during the years ended December 31, 2019 and 2018 was \$4,000 and \$51,000, respectively. The aggregate intrinsic value of options vested during the year ended December 31, 2019 was \$0. No options were granted during the year ended December 31, 2019. The aggregate fair value of options vested during the years ended December 31, 2019 and 2018 was \$294,000 and \$1,918,000, respectively. As of December 31, 2019, the total unrecognized compensation expense related to non-vested stock option awards was \$1,074,000, which is expected to be recognized over a weighted-average term of approximately 2 year.

The following table summarizes non-vested restricted share activity for the year ended December 31, 2019:

	Non-vested Restricted Shares	Weighted Average Grant Date Fair Value
Non-vested restricted stock at December 31, 2018	–	\$ –
Granted	777,000	\$ 3.00
Vested	(214,000)	\$ 3.14
Canceled	(87,000)	\$ 2.81
Non-vested restricted stock at December 31, 2019	476,000	\$ 2.98

The weighted-average grant date fair value of non-vested restricted stock granted during the years ended December 31, 2019 and 2018 was \$2.98 and \$3.79, respectively. The aggregate fair value of restricted stock that vested during the years ended December 31, 2019 and 2018 was \$672,000 and \$972,000, respectively. As of December 31, 2019, unrecognized compensation expense related to non-vested restricted stock awards was \$1,321,000, which is expected to be recognized over a weighted-average term of approximately 2 year.

The following table summarizes restricted stock units activity for the year ended December 31, 2019:

	Non-vested Restricted Shares	Weighted Average Grant Date Fair Value
Non-vested restricted stock units at December 31, 2018	—	\$ —
Granted	900,000	\$ 1.42
Vested	—	\$ —
Canceled	—	\$ —
Non-vested restricted stock units at December 31, 2019	<u>900,000</u>	<u>\$ 1.42</u>
Vested restricted stock units at December 31, 2019	<u>14,000</u>	<u>\$ 16.72</u>

The weighted-average grant date fair value of restricted units granted during the years ended December 31, 2019 was \$1.42. There were no restricted units granted during the year ended December 31, 2018. The aggregate fair value of restricted stock units granted during the year ended December 31, 2019 was \$1,280,000. The aggregate fair value of restricted stock units that vested during the years ended December 31, 2019 and 2018 was \$240,000 and \$40,000, respectively. As of December 31, 2019, unrecognized compensation expense related to non-vested restricted stock units was \$1,140,000. Stock compensation expense is recognized in general and administrative expenses.

Profits Interest Plan

On February 16, 2017, AIP Operation LLC, a Delaware limited liability company (“AIP”), and an indirect subsidiary of Acacia, adopted a Profits Interest Plan (the “Plan”) that provides for the grant of membership interests in AIP to certain members of management and the Board of Directors of Acacia as compensation for services rendered for or on behalf of AIP. Each profits interest unit granted pursuant to the Plan is intended to qualify as a “profits interest” for U.S. federal income tax purposes and will only have value to the extent the fair value of AIP increases beyond the fair value at the issuance date of the membership interests. The membership interests are represented by units (the “Units”) reserved for the issuance of awards under the Plan. The Units entitle the holders to share in or be allocated certain AIP profits and losses and to receive or share in AIP distributions pursuant to the AIP Limited Liability Company Operating Agreement entered into as of February 16, 2017 (the “LLC Agreement”). In connection with the adoption of the Plan, a form of Profits Interest Agreement was approved pursuant to which Units may be granted from time to time. Units vest upon AIP’s achievement of certain performance milestones (one-third upon 150% appreciation, and the remaining two-thirds upon 300% appreciation in value of Acacia’s aggregate investment in Veritone), subject to the continued service of the recipient, and are subject to the terms and conditions of the Plan, the Profits Interest Agreement and the LLC Agreement. The Units were fully vested in September 2017.

Acacia owns 60% of the membership interests in AIP and at all times will control AIP. Acacia from time to time may contribute to AIP certain assets or securities related to portfolio companies in which Acacia holds an interest. Units may be awarded as one-time, discretionary grants to recipients. As of December 31, 2019, AIP holds the Veritone Warrant described at Note 6.

Profits interests totaling 400 Units, or 40% of the membership interests in AIP, were granted in February 2017, with an aggregate grant date fair value of \$722,000. The fair value of the Units totaled \$591,000 as of December 31, 2019. Upon full vesting of the units in September 2017, all previously unrecognized compensation expense was immediately recognized.

Compensation expense for the periods presented was comprised of the following:

	<u>2019</u>	<u>2018</u>
	(in thousands)	
Restricted stock awards with time-based service conditions	\$ 907	\$ 460
Restricted stock units with time-based service conditions	–	1
Restricted stock units with performance-based vesting conditions	140	–
Stock options with time-based service vesting conditions	28	1,672
Profits interests units	–	(2,450)
Total compensation expense	<u>\$ 1,075</u>	<u>\$ (317)</u>

10. COMMITMENTS AND CONTINGENCIES

Facility Leases

The Company primarily leases office facilities under operating lease arrangements that will end in various years through July 2024.

On June 7, 2019, we entered into a building lease agreement (the “New Lease”) with Jamboree Center 4 LLC (the “Landlord”). Pursuant to the New Lease, we have leased approximately 8,293 square feet of office space for our corporate headquarters in Irvine, California. The New Lease commenced on August 1, 2019. The term of the New Lease is 60 months from the commencement date, provides for annual rent increases, and does not provide us the right to early terminate or extend our lease terms.

The Company has subleased a facility under another operating lease agreement (the “Old Lease”) that we ceased using in December 2018, and the sublease will go through the remaining term of the Old Lease, which ended on January 31, 2020. During the year ended December 31, 2018, the Company recorded a one-time charge of \$629,000 for the excess of lease payments over the anticipated sublease income through expiration of the lease.

Operating lease costs, net of sublease income of \$780,000, were \$426,000 for the year ended December 31, 2019. Operating lease costs, net of sublease income of \$65,000, were \$1,106,000 for the year ended December 31, 2018.

The table below presents aggregate future minimum payments due under the New Lease and the Old Lease, reconciled to lease liabilities included in the consolidated balance sheet as of December 31, 2019:

	Operating Leases	
	(In thousands)	
2020	\$	434
2021		334
2022		349
2023		364
2024		218
Total minimum payments	<u>\$</u>	<u>1,699</u>
Less: short-term lease liabilities		(435)
Long-term lease liabilities	<u>\$</u>	<u>1,264</u>

Inventor Royalties and Contingent Legal Expenses

In connection with the investment in certain patents and patent rights, certain of Acacia's operating subsidiaries executed related agreements which grant to the former owners of the respective patents or patent rights, the right to receive inventor royalties based on future net revenues (as defined in the respective agreements) generated as a result of licensing and otherwise enforcing the respective patents or patent portfolios.

Acacia's operating subsidiaries may retain the services of law firms that specialize in patent licensing and enforcement and patent law in connection with their licensing and enforcement activities. These law firms may be retained on a contingent fee basis whereby such law firms are paid on a scaled percentage of any negotiated fees, settlements or judgments awarded based on how and when the fees, settlements or judgments are obtained.

Patent Enforcement

Certain of Acacia's operating subsidiaries are often required to engage in litigation to enforce their patents and patent rights. In connection with any of Acacia's operating subsidiaries' patent enforcement actions, it is possible that a defendant may request and/or a court may rule that an operating subsidiary has violated statutory authority, regulatory authority, federal rules, local court rules, or governing standards relating to the substantive or procedural aspects of such enforcement actions. In such event, a court may issue monetary sanctions against Acacia or its operating subsidiaries or award attorney's fees and/or expenses to a defendant(s), which could be material.

Other

On June 17, 2015, Celltrace Communications Ltd. ("Celltrace") filed a lawsuit against Acacia in U.S. District Court for the Southern District of New York, Case No. 1:15-cv-04746, alleging, among other things, significant damages for alleged breach of contract, unjust enrichment and fraud. Acacia disputes the allegations and does not believe that Celltrace is entitled to any damages. Acacia successfully moved to compel arbitration of the dispute, and the District Court stayed the litigation pending arbitration before the International Court of Arbitration for the International Chamber of Commerce (the "ICC"). Celltrace appealed the decision to the U.S. Court of Appeals for the Second Circuit, which denied the appeal. Celltrace filed its request for arbitration of the claims with the ICC on November 28, 2016. Acacia filed an answer denying all allegations of wrongdoing and asserting affirmative defenses. A tribunal was appointed to preside over the arbitration and conducted its first case management conference on June 26, 2017. The parties conducted discovery and submitted their cases in chief to the tribunal in a series of written submissions per the tribunal's orders between January 2018 and December 2018. The tribunal held an evidentiary hearing with live witness testimony in New York City between February 4, 2019 and February 13, 2019. At the end of the hearing, the tribunal set a schedule for post-hearing briefing by the parties, which concluded in April 2019. We are now waiting for the tribunal to issue its decision. Acacia continues to vigorously contest all allegations of wrongdoing.

In a separate case on December 6, 2017, the Federal Court of Canada allowed a counterclaim for invalidity of a patent asserted by Rapid Completions LLC and awarded costs payable by Rapid Completions LLC in an amount to be determined.

Acacia is subject to claims, counterclaims and legal actions that arise in the ordinary course of business. Management believes that the ultimate liability with respect to these claims and legal actions, if any, will not have a material effect on Acacia's consolidated financial position, results of operations or cash flows. Fiscal year 2019 operating expenses included expenses for settlement and contingency accruals totaling \$1,756,000, net of prior accruals. Refer to Note 4 for information on accrued expenses.

Guarantees and Indemnifications

Certain of Acacia's operating subsidiaries have made guarantees and indemnities under which they may be required to make payments to a guaranteed or indemnified party, in relation to certain transactions, including revenue transactions in the ordinary course of business. In connection with certain facility leases, Acacia and certain of its operating subsidiaries have indemnified lessors for certain claims arising from the facilities or the leases. Acacia indemnifies its directors and officers to the maximum extent permitted under the laws of the State of Delaware. However, Acacia has a directors and officers insurance policy that may reduce its exposure in certain circumstances and may enable it to recover a portion of future amounts that may be payable, if any. The duration of the guarantees and indemnities varies and, in many cases is indefinite but subject to statute of limitations. The majority of guarantees and indemnities do not provide any limitations of the maximum potential future payments that Acacia could be obligated to make. To date, Acacia has made no payments related to these guarantees and indemnities. Acacia estimates the fair value of its indemnification obligations to be insignificant based on this history and therefore, have not recorded any liability for these guarantees and indemnities in the accompanying consolidated balance sheets. Additionally, no events or transactions have occurred that would result in a material liability at December 31, 2019.

Other

In August 2010, a wholly owned subsidiary of Acacia became the general partner of the Acacia IP Fund, which was formed in August 2010. The Acacia IP Fund invests in, licenses and enforces IP consisting primarily of patents, patent rights, and patented technologies. The Acacia IP Fund was terminated as of December 31, 2017. The final distribution to the partners of the Acacia IP Fund will be made in 2020.

11. RETIREMENT SAVINGS PLAN AND EXECUTIVE SEVERANCE POLICY

Retirement Savings Plan. Acacia has an employee savings and retirement plan under section 401(k) of the Code (the "Plan"). The Plan is a defined contribution plan in which eligible employees may elect to have a percentage of their compensation contributed to the Plan, subject to certain guidelines issued by the Internal Revenue Service. Acacia may contribute to the Plan at the discretion of the Board of Directors. There were no contributions made by Acacia during the periods presented.

Executive Severance Policy. Under Acacia's Amended Executive Severance Policy, full-time employees as of July 2017 and prior with the title of Senior Vice President and higher ("SVP and higher") are entitled to receive certain benefits upon termination of employment. If employment of an SVP and higher employee is terminated for other than cause or other than on account of death or disability, Acacia will (i) promptly pay to the SVP and higher employee a lump sum amount equal to the aggregate of (a) accrued obligations (i.e., annual base salary through the date of termination to the extent not theretofore paid and any compensation previously deferred (together with any accrued interest or earnings thereon) and any accrued vacation pay, and reimbursable expenses, in each case to the extent not theretofore paid) and (b) three (3) months of base salary for each full year that the SVP and higher employee was employed by the Company (the "Severance Period"), up to a maximum of twelve (12) months (eighteen (18) months for executive officers of Acacia Research Corporation) of base salary, and (ii) provide to the SVP and higher employee, Acacia paid COBRA coverage for the medical and dental benefits selected in the year in which the termination occurs, for the duration of the Severance Period. Results for the year ended December 31, 2019 and 2018 include \$420,000 and \$2,458,000 of expenses incurred under the executive severance policy.

12. SUPPLEMENTAL CASH FLOW INFORMATION

Cash paid for state income taxes totaled \$85,000 and \$140,000 for the years ended December 31, 2019 and 2018, respectively. Foreign taxes withheld totaled \$249,000 and \$1,093,000 for the years ended December 31, 2019 and 2018, respectively. Refer to Note 4 for accrued foreign taxes payable.

Refer to Note 6 for information regarding noncash investing activity related to the investment in Veritone for the periods presented.

13. RECENT ACCOUNTING PRONOUNCEMENTS

Recent Accounting Pronouncements - Recently Adopted.

In February 2016, FASB issued ASU 2016-02, *Leases*, or ASC 842 which requires a lessee to recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset. In July 2018, FASB issued ASU 2018-11, *Leases*, which provides an additional transition option for an entity to apply the provisions of ASC 842 by recognizing a cumulative effect adjustment at the effective date of adoption without adjusting the prior comparative periods presented. Further, in January 2019, FASB issued ASU 2019-01, *Leases: Codification Improvements*, which provides disclosure relief for the interim periods when adopting ASC 842. The primary impact of adopting ASC 842 for the Company was the recognition in the consolidated balance sheet of certain lease-related assets and liabilities for operating leases with terms longer than 12 months as of January 1, 2019. Such amounts were not previously accounted for in the Company's consolidated balance sheets. The Company adopted ASC 842 as of January 1, 2019, electing the practical expedient approaches. As a result, we recognized approximately \$1.6 million of right-of-use assets and an increase of \$1.7 million in lease-related liabilities as of December 31, 2019. The adoption of ASC 842 did not have a material impact on the Company's consolidated results of operations for the year ending December 31, 2019.

In December 2019, the FASB issued ASU No. 2019-12 Income Taxes (Topic 740)—Simplifying the Accounting for Income Taxes, to remove certain exceptions and improve consistency of application, including, among other things, requiring that an entity reflect the effect of an enacted change in tax laws or rates in the annual effective tax rate computation in the interim period that includes the enactment date. The amendments in this update will be effective for the Company beginning with fiscal year 2021, with early adoption permitted. Most amendments within the standard are required to be applied on a prospective basis, while certain amendments must be applied on a retrospective or modified retrospective basis. Management is currently evaluating the impact that the amendments in this update will have on the Company's consolidated financial statements.

14. FAIR VALUE DISCLOSURES

Acacia holds the following types of financial instruments at December 31, 2019 and 2018.

Trading securities - debt. Debt securities includes corporate bonds with fair value that is determined by third party quotations from outside pricing services and/or computerized pricing models, which may be based on transactions, bids or estimates. Acacia classifies the fair value of corporate bonds within Level 2 of the valuation hierarchy.

Trading securities - equity. Equity securities includes investments in public companies common stock and are recorded at fair value based on the quoted market price of each share on the valuation date. The fair value of these securities are within Level 1 of the valuation hierarchy.

Investments at fair value - common stock. Acacia's equity investment in Veritone common stock is recorded at fair value based on the quoted market price of Veritone's common stock on the applicable valuation date (Level 1).

Investments at fair value - warrants. Warrants are recorded at fair value, as based on the Black-Scholes option-pricing model (Level 2).

Profits interests. For the years ended December 31, 2019 and 2018, the fair value of the Units was estimated at 40% of the fair value of the 10% Warrant, based on the Black-Scholes option-pricing model (Level 2).

Series A Warrants. Series A Warrants are recorded at fair value, using Black-Scholes option-pricing model (Level 2).

Embedded derivative liability. Embedded derivatives that are required to be bifurcated from their host contract are evaluated and valued separately from the host instrument. A binomial lattice framework is used to estimate the fair value of the embedded derivative in the Series A Redeemable Convertible Preferred Stock issued by the Company in 2019 (Level 3).

15. RELATED PARTY TRANSACTIONS

During the year ended December 31, 2019, the Company purchased shares of common stock of Drive Shack, Inc. ("Drive Shack") for an aggregate purchase price of \$2.4 million. Drive Shack and Clifford Press, Chief Executive Officer and director of Acacia, are related parties as Mr. Press is a board member of Drive Shack. During the year ended December 31, 2018, the Company paid \$976,000 in expenses related to the reimbursement of costs incurred by Sidus Investment Management, LLC ("Sidus") on behalf of the participants (together with Sidus, the "Participants") named in the proxy statement filed on June 7, 2018 by the Participants, in connection with a contested proxy election. These expenses are included in general and administrative expenses on the consolidated statements of operations. Alfred V. Tobia, Jr. and Clifford Press are related parties as each of them are Participants and members of the Company's Board of Directors. In addition, Sidus is a related party as Mr. Tobia is a Co-Founder and Managing Member at Sidus.

16. SERIES A REDEEMABLE CONVERTIBLE PREFERRED STOCK

On November 18, 2019, the Company entered into a Securities Purchase Agreement with Starboard Value LP ("Starboard") pursuant to which the Company issued (i) 350,000 shares of Series A Redeemable Convertible Preferred Stock with a par value of \$0.001 per share and a stated value of \$100 per share, and (ii) Series A Warrants to purchase up to 5,000,000 shares of the Company's common stock (see Note 17) to Starboard. The Securities Purchase Agreement also established the terms of certain senior secured notes and additional warrants (the "Series B Warrants") which may be issued to Starboard in the future.

The Series A Redeemable Convertible Preferred Stock can be converted into a number of shares of common stock equal to (i) the stated value thereof plus accrued and unpaid dividends, divided by (ii) the conversion price of \$3.65 (subject to certain anti-dilution adjustments). Holders may elect to convert the Series A Redeemable Convertible Preferred Stock into common stock at any time. The Company may elect to convert the Series A Redeemable Convertible Preferred Stock into shares of Common Stock any time on or after November 15, 2025, provided that the closing price of the Company's common stock equals or exceeds 190% of the conversion price for 30 consecutive trading days and assuming certain other conditions of the common stock have been met.

Holders have the option to redeem all or a portion of the Series A Redeemable Convertible Preferred Stock during the periods of May 15, 2021 through August 15, 2021 and May 15, 2022 through August 15, 2022, provided that the Company has not issued at least \$50.0 million aggregate principal of senior secured notes to Starboard pursuant to the Securities Purchase Agreement. Holders also have the option to redeem all or a portion of the Series A Redeemable Convertible Preferred Stock during the period of November 15, 2024 through February 15, 2025. Additionally, holders have the option to redeem all or a portion of the Series A Redeemable Convertible Preferred Stock upon the occurrence of (i) a change of control or (ii) various other triggering events, such as the suspension from trading or delisting of the Company's common stock. If the Series A Redeemable Convertible Preferred Stock is redeemed at the option of the holders, the redemption price may include a make-whole amount or a stated premium, depending on the redemption scenario.

The Company may redeem all, and not less than all, of the Series A Redeemable Convertible Preferred Stock (i) upon a change of control or (ii) during the period of May 15, 2022 through August 15, 2022, provided that the Company has not issued at least \$50.0 million aggregate principal of the senior secured notes, and assuming certain conditions of the common stock have been met. If the Series A Redeemable Convertible Preferred Stock is redeemed at the option of the Company, the redemption price would include a make-whole amount or a 15% premium depending on the circumstances.

If any Series A Redeemable Convertible Preferred Stock remains outstanding on November 15, 2027, the Company shall redeem such Series A Redeemable Convertible Preferred Stock in cash.

In all redemption scenarios, the redemption price for the Series A Redeemable Convertible Preferred Stock includes the stated value plus accrued and unpaid dividends. In addition, depending on the redemption scenario, the redemption price may also include a make-whole amount or stated premium as described above.

If the Company issues senior secured notes, the Holder may exchange the Series A Redeemable Convertible Preferred Stock for (i) senior secured notes and (ii) Series B Warrants to purchase common stock.

The Series A Redeemable Convertible Preferred Stock accrues cumulative dividends quarterly at annual rate of 3.0% on the stated value. Upon consummation of an approved investment (an investment to be identified and approved by each of the Company and Starboard), the dividend rate will increase to 8.0% on the stated value. Upon certain triggering events, the dividend rate will increase to 7.0% if the triggering event occurs before an approved investment or 10.0% on the stated value if the triggering event occurs after an approved investment. The Series A Redeemable Convertible Preferred Stock also participates on an as-converted basis in any regular or special dividends paid to common stockholders. Total accrued and unpaid dividends as of December 31, 2019 was \$0.1 million.

Holders of the Series A Redeemable Convertible Preferred Stock have the right to vote with common stockholders on an as-converted basis on all matters. Holders of Series A Redeemable Convertible Preferred Stock will also be entitled to a separate class vote with respect to amendments to the Company's organizational documents that generally have an adverse effect on the Series A Redeemable Convertible Preferred Stock.

Upon liquidation of the Company, holders of Series A Redeemable Convertible Preferred Stock have a liquidation preference over holders of our common stock and will be entitled to receive, prior to any distribution to holders of our common stock, an amount equal to the greater of (i) the stated value plus accrued and unpaid dividends or (ii) the amount that would have been received if the Series A Redeemable Convertible Preferred Stock had been converted into common stock immediately prior to the liquidation event at the then effective conversion price.

The Company determined that certain features of the Series A Redeemable Convertible Preferred Stock should be bifurcated and accounted for as a derivative. Each of these features are bundled together as a single, compound embedded derivative.

Total proceeds received and transaction costs incurred from the issuance of the Series A Redeemable Convertible Preferred Stock amounted to \$35 million and \$1.3 million, respectively. Proceeds received were allocated based on the fair value of the instrument without the Series A Warrants and of the Series A Warrants themselves at the time of issuance. The proceeds allocated to the Series A Redeemable Convertible Preferred Stock were then further allocated between the host preferred stock instrument and the embedded derivative, with the embedded derivative recorded at fair value and the Series A Redeemable Convertible Preferred Stock recorded at the residual amount. The portion of the proceeds allocated to the Series A Warrants, embedded derivative, and Series A Redeemable Convertible Preferred Stock was \$4.8 million, \$21.2 million, and \$8.9 million, respectively. Transaction costs were also allocated between the Series A Redeemable Convertible Preferred Stock and the Series A Warrants on the same basis as the proceeds. The transaction costs allocated to the Series A Redeemable Convertible Preferred Stock were treated as a discount to the Series A Redeemable Convertible Preferred Stock. The transaction costs allocated to the Series A Warrants were expensed as incurred.

The Company classifies the Series A Redeemable Convertible Preferred Stock as mezzanine equity as the instrument will become redeemable at the option of the holder in various scenarios or otherwise on November 15, 2027. As it is probable that the Series A Redeemable Convertible Preferred Stock will become redeemable, the Company accretes the instrument to its redemption value using the effective interest method and recognizes any changes against additional paid in capital in the absence of retained earnings. Accretion for the year ended December 31, 2019 was \$0.3 million.

In connection with the issuance of the Series A Redeemable Convertible Preferred Stock, the Company executed a Registration Rights Agreement and a Governance Agreement with Starboard. Under the Registration Rights Agreement, the Company agreed to provide certain registration rights with respect to the Series A Redeemable Convertible Preferred Stock and shares of Common Stock issued upon conversion. In accordance with the Governance Agreement, the Company agreed to (i) increase the size of the Board of Directors from six to seven members, (ii) appoint a director of the Company, (iii) grant Starboard the right to recommend two additional directors for appointment to the board, (iv) form a Strategic Committee of the Board tasked with sourcing and performing due diligence on potential acquisition targets, (v) appoint certain directors to the Strategic Committee, and (vi) appoint a director to the Nominating and Corporate Governance Committee.

The following features of the Series A Redeemable Convertible Preferred Stock are required to be bifurcated from the host preferred stock and accounted for separately as an embedded derivative: (i) the right of the holders to redeem the shares (the "put option"), (ii) the right of the holders to receive common stock upon conversion of the shares (the "conversion option"), (iii) the right of the Company to redeem the shares (the "call option"), and (iv) the change in dividend rate upon consummation of an approved investment or a triggering event (the "contingent dividend rate feature").

These features are required to be accounted for separately from the Series A Redeemable Convertible Preferred Stock because the features were determined to be not clearly and closely related to the debt-like host and also did not meet any other scope exceptions for derivative accounting. Therefore, these features are bundled together and are accounted for as a single, compound embedded derivative liability.

Accordingly, we have recorded an embedded derivative liability representing the combined fair value of each of these features. The embedded derivative liability is adjusted to reflect fair value at each period end with changes in fair value recorded in the "Change in fair value of redeemable preferred stock embedded derivative" financial statement line item of the accompanying consolidated statements of operations.

17. SERIES A WARRANTS

On November 18, 2019, in connection with the issuance of the Series A Redeemable Convertible Preferred Stock, the Company issued a detachable Series A Warrants to acquire up to purchase 5,000,000 shares of common stock at a price of \$3.65 per share (subject to certain anti-dilution adjustments) at any time during a period of eight years beginning on the instrument's issuance date of the Series A Warrants. The fair value of the Series A Warrants was \$4.8 million. The Series A Warrants will be recognized at fair value at each reporting period until exercised, with changes in fair value recognized in other income (expense) in the accompanying consolidated statements of operations. As of December 31, 2019, the fair value of the Series A Warrants was \$3.6 million. As of December 31, 2019, the Series A Warrants have not been exercised.

The Series A Warrants are classified as a liability in accordance with ASC 480, Distinguishing Liabilities from Equity, as the agreement provides for net cash settlement upon a change in control, which is outside the control of the Company.

18. QUARTERLY FINANCIAL DATA (unaudited)

The following table sets forth unaudited consolidated statements of operations data for the eight quarters in the period ended December 31, 2019. This information has been derived from Acacia's unaudited condensed consolidated financial statements that have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, include all adjustments, consisting of normal recurring adjustments, necessary for a fair statement of the information when read in conjunction with the audited consolidated financial statements and related notes thereto. Acacia's quarterly results have been, and may in the future be, subject to significant fluctuations. As a result, Acacia believes that results of operations for interim periods should not be relied upon as any indication of the results to be expected in any future periods.

	Quarter Ended							
	Dec. 31, 2019	Sept. 30, 2019	Jun. 30, 2019	Mar. 31, 2019	Dec. 31, 2018	Sept. 30, 2018	Jun. 30, 2018	Mar. 31, 2018
	(Unaudited, in thousands, except share and per share information)							
Revenues	\$ 688	\$ 1,711	\$ 5,460	\$ 3,387	\$ 49,203	\$ 13,725	\$ 6,485	\$ 62,093
Portfolio operations:								
Inventor royalties	192	776	2,623	1,353	11,002	1,181	1,241	21,744
Contingent legal fees	4	35	375	177	11,756	2,949	1,037	15,759
Patent acquisition expenses	—	—	—	—	—	—	—	4,000
Litigation and licensing expenses - patents	1,160	987	1,855	3,801	1,689	1,549	2,639	2,989
Amortization of patents	857	863	818	656	11,560	4,952	5,278	5,330
Other portfolio expenses (income)	1,581	(475)	—	650	400	2,202	—	—
Total portfolio operations	3,794	2,186	5,671	6,637	36,407	12,833	10,195	49,822
Net portfolio income (loss)	(3,106)	(475)	(211)	(3,250)	12,796	892	(3,710)	12,271
General and administrative expenses (including non-cash stock compensation expense)	4,328	4,630	3,763	3,655	2,754	5,855	6,916	3,301
Impairment of patent-related intangible assets	—	—	—	—	—	—	28,210	—
Operating income (loss)	(7,434)	(5,105)	(3,974)	(6,905)	10,042	(4,963)	(38,836)	8,970
Total other income (expense)	5,921	(2,503)	(1,774)	2,821	(21,012)	(27,595)	10,615	(40,890)
Income (loss) before provision for income taxes	(1,513)	(7,608)	(5,748)	(4,084)	(10,970)	(32,558)	(28,221)	(31,920)
Provision for income taxes	2,147	—	(9)	(314)	(397)	(306)	(285)	(191)
Net income (loss) including noncontrolling interests	634	(7,608)	(5,757)	(4,398)	(11,367)	(32,864)	(28,506)	(32,111)
Net (income) loss attributable to noncontrolling interests in subsidiaries	—	—	—	14	(2)	(331)	79	73
Net income (loss) attributable to Acacia Research Corporation	\$ 634	\$ (7,608)	\$ (5,757)	\$ (4,384)	\$ (11,369)	\$ (33,195)	\$ (28,427)	\$ (32,038)
Less: Accretion of redeemable preferred stock	(307)	—	—	—	—	—	—	—
Net income (loss) attributable to common shareholders – basic:	\$ 327	\$ (7,608)	\$ (5,757)	\$ (4,384)	\$ (11,369)	\$ (33,195)	\$ (28,427)	\$ (32,038)
Basic income (loss) per share	\$ 0.01	\$ (0.15)	\$ (0.12)	\$ (0.09)	\$ (0.23)	\$ (0.67)	\$ (0.57)	\$ (0.63)
Weighted-average number of shares outstanding, basic	49,875,750	49,828,361	49,696,016	49,655,881	49,639,172	49,557,748	50,061,812	50,632,958
Add: Accretion of redeemable preferred stock	307	—	—	—	—	—	—	—
Less: Mark-to-market adjustment for preferred stock embedded derivative	(3,258)	—	—	—	—	—	—	—
Net loss attributable to common shareholders – diluted:	\$ (2,624)	\$ (7,608)	\$ (5,757)	\$ (4,384)	\$ (11,369)	\$ (33,195)	\$ (28,427)	\$ (32,038)
Diluted income (loss) per share	\$ (0.05)	\$ (0.15)	\$ (0.12)	\$ (0.09)	\$ (0.23)	\$ (0.67)	\$ (0.57)	\$ (0.63)
Weighted-average number of shares outstanding, diluted	54,406,835	49,828,361	49,696,016	49,655,881	49,639,172	49,557,748	50,061,812	50,632,958

Restatement

Subsequent to the issuance of the interim reports for the periods ended March, June and September 2019, the Company identified balances that were presented incorrectly relating to the presentation of cash flows. The Company re-evaluated its determination of the classification of cash flows related to trading securities and determined the classification of such cash flows within investing activities to be more appropriate.

Included below is a summary of the previously reported amounts, the impact of these adjustments and the as-adjusted amounts for the interim periods ended March, June and September 2019.

	Three months ended March 31, 2019		Three months ended June 30, 2019		Three months ended September 30, 2019	
	As reported	As adjusted	As reported	As adjusted	As reported	As adjusted
Net cash provided by (used in) operating activities	(58,812)	(1,958)	(66,026)	(2,268)	(65,748)	(846)
Net cash provided by (used in) investing activities	3,288	(53,566)	625	(63,133)	3,721	(61,181)
Net cash provided by financing activities	—	—	79	79	79	79
Increase/(decrease) in cash and cash equivalent	(55,524)	(55,524)	(65,322)	(65,322)	(61,948)	(61,948)

19. SUBSEQUENT EVENTS

Stockholder approval. On February 14, 2020, the Company's stockholders approved, for purposes of Nasdaq Rules 5635(b) and 5635(d), as applicable, (i) the voting of the Series A Convertible Preferred Stock on an as-converted basis and (ii) the issuance of the maximum number of shares of common stock issuable in connection with the potential future (A) conversion of the Series A Convertible Preferred Stock and (B) exercise of the Series A and Series B Warrants, in each case, without giving effect to the exchange cap set forth in the Series A Preferred Stock Certificate of Designations and in the Series A Warrants, issued pursuant to the Securities Purchase Agreement dated November 18, 2019 (see Note 16). The Company's stockholders also approved an amendment to the Company's Amended and Restated Certificate of Incorporation to increase the total number of authorized shares of common stock by 200,000,000 shares, from 100,000,000 shares to 300,000,000 shares.

Issuance of Series B Warrants to Starboard. On February 25, 2020, pursuant to the terms of the Securities Purchase Agreement with Starboard, the Company issued Series B Warrants to purchase up to 100 million shares of the Company's common stock at an exercise price of either (i) \$5.25 per share, if exercising by cash payment, or (ii) \$3.65 per share, if exercising by cancellation of a portion of senior secured notes. The Company issued the Series B Warrants for an aggregate purchase price of \$4.6 million.

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
ACACIA RESEARCH CORPORATION**

Acacia Research Corporation, a corporation organized and existing under the laws of the State of Delaware (the Corporation), certifies that:

A. The name of the Corporation is Acacia Research Corporation. The Corporation's original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 8, 1999.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and restated, integrates, and further amends the provisions of the Corporations Certificate of Incorporation.

C. The text of the Amended and Restated Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, Acacia Research Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Jennifer Graff, a duly authorized officer of the Corporation, on February 18, 2020.

/s/ Jennifer Graff

Jennifer Graff

Secretary

EXHIBIT A

**ARTICLE I
NAME**

The name of the corporation is Acacia Research Corporation (the "Corporation").

**ARTICLE II
ADDRESS OF REGISTERED OFFICE;
NAME OF REGISTERED AGENT**

The address of the registered office of the Corporation in the State of Delaware 32 W. Lookerman Street, Suite 201, Dover, County of Kent, Delaware. The name of its registered agent at such address is Registered Agent Solutions, Inc.

**ARTICLE III
PURPOSE**

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

**ARTICLE IV
CAPITAL STOCK**

SECTION 1. AUTHORIZATION. The aggregate number of shares of stock which the Corporation shall have authority to issue is three hundred and ten million (310,000,000) shares, of which three hundred million (300,000,000) shares shall be shares of common stock having a par value of \$0.001 per share (the "Common Stock"), and ten million (10,000,000) shares shall be shares of preferred stock having a par value of \$0.001 per share (the "Preferred Stock") and issuable in one or more series as hereinafter provided.

SECTION 2. COMMON STOCK. The voting powers, preferences and relative, participating, optional or other special rights of the Common Stock, and the qualifications and restrictions thereon, shall be as follows in this Section 2.

2.1 Dividends. Subject to the rights, preferences, privileges, restrictions and other matters pertaining to the Preferred Stock that may at that time be outstanding, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the Corporation legally available therefore, such dividends as may be declared from time to time by the Board of Directors.

2.2 Voting Rights. Except as otherwise required by law, or as otherwise fixed by resolution or resolutions of the Board of Directors with respect to one or more series of Preferred Stock, the entire voting power and all voting rights shall be vested exclusively in the Common Stock, and each stockholder of the Corporation who at the time possesses voting power for any purpose shall be entitled to one vote for each share of such stock standing in his or her name on the books of the Corporation.

2.3 Liquidation Rights. In the event of any liquidation, dissolution or winding up (either voluntary or involuntary) of the Corporation, the holders of shares of Common Stock shall be entitled to receive the assets and funds of the Corporation available for distribution after payments to creditors and to the holders of any Preferred Stock of the Corporation that may at the time be outstanding, in proportion to the number of shares held by them. Neither the merger nor consolidation of the Corporation into or with any other corporation, nor a sale, transfer or lease of all or any part of the assets of the Corporation, shall, alone, be deemed a liquidation or winding up of the Corporation or cause the dissolution of the Corporation, for purposes of this Section 2.3.

SECTION 3. PREFERRED STOCK. The Preferred Stock may be issued from time to time in one or more series, each with such distinctive designation as may be stated in the Certificate of Incorporation or in any amendment hereto, or in a resolution or resolutions providing for the issue of such stock from time to time adopted by the Board of Directors or a duly authorized committee thereof. The resolution or resolutions providing for the issue of shares of a particular series shall fix, subject to applicable laws and the provisions of the Certificate of Incorporation, for each such series the number of shares constituting such series and the designation and the voting powers, preferences and relative, participating, optional or other special rights and the qualifications, limitations or restrictions thereof, including, without limiting the generality of the foregoing, such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange, and such other subjects or matters as may be fixed by the Board of Directors or a duly authorized committee thereof under the DGCL.

ARTICLE V BOARD OF DIRECTORS

SECTION 1. NUMBER OF DIRECTORS AND THEIR ELECTION . The number of directors of the Corporation shall be fixed from time to time by a by-law of the Corporation or amendment thereof duly adopted by the Board of Directors. Except as otherwise provided for or fixed pursuant to the provisions of ARTICLE V of this Certificate of Incorporation or any resolution or resolutions of the Board of Directors providing for the issuance of any class or series of stock having a preference over the Common Stock as to dividends or upon liquidation to elect additional directors under specified circumstances, the number of directors shall be determined by the Board of Directors in accordance with the By-laws of the Corporation. Election of directors need not be by written ballot, unless so provided in the By-laws of the Corporation.

SECTION 2. POWERS OF THE BOARD OF DIRECTORS . In furtherance, and not in limitation, of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, alter, amend and repeal the By-laws of the Corporation, subject to the power of the stockholders of the Corporation to alter or repeal any by-law whether adopted by them or otherwise; provided, however, that the affirmative vote of 66 and 2/3 percent of the voting power of the capital stock of the Corporation entitled to vote thereon shall be required for stockholders to adopt, amend, alter or repeal any provision of the By-laws of the Corporation.

SECTION 3. TERM. The directors, other than those who may be elected by the holders of Preferred Stock or any other class or series of stock having a preference over the Common Stock as to dividends or upon liquidation pursuant to the terms of this Certificate of Incorporation or any resolution or resolutions providing for the issuance of such class or series of stock adopted by the Board of Directors, shall be elected by stockholders at each annual meeting of stockholders to hold office for a term expiring at the next annual meeting of stockholders and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

SECTION 4. VACANCIES. Any newly-created directorship resulting from an increase in the authorized number of directors or any vacancies in the Board of Directors occurring by reason of death, resignation, retirement, disqualification or removal may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director. A director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term expiring at the next annual meeting of the stockholders and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office.

**ARTICLE VI
STOCKHOLDER ACTIONS**

SECTION 1. MEETINGS AND RECORDS. Meetings of stockholders may be held within or without the State of Delaware, as the By-laws of the Corporation may provide. The books of the Corporations may be kept (subject to the DGCL) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-laws of the Corporation.

SECTION 2. SPECIAL MEETINGS. Special meetings of stockholders may be called at any time by the Board of Directors or by the Chairman of the Board of Directors, or the President, or the Secretary of the Corporation upon the written request of one or more stockholders of record of the Corporation that hold at least twenty-five percent (25%) in voting power of the outstanding shares of stock of the Company and who have delivered such requests in accordance with and subject to the procedures and conditions and any other provisions set forth in the By-laws of the Corporation (as amended from time to time), including any limitations set forth in the By-laws of the Corporation on the ability to make such a request for such a special meeting.

SECTION 3. WRITTEN CONSENTS. No action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of the stockholders may be effected by written consent of the stockholders in lieu of a meeting of stockholders.

**ARTICLE VII
LIMITATION ON LIABILITY OF DIRECTORS**

No person shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, including without limitation for serving on a committee of the Board of Directors, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. If the DGCL is amended after the date of the filing of this Certificate of Incorporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended. Any amendment, repeal or modification of this ARTICLE VII shall not adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any act or omission occurring prior to such amendment, repeal or modification.

**ARTICLE VIII
INDEMNIFICATION**

SECTION 1. The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, his or her testator or intestate is or was a director, officer or employee of the Corporation or any predecessor of the Corporation or serves or served at any other enterprise as a director, officer or employee at the request of the Corporation or any predecessor to the Corporation. No amendment, repeal or modification of this ARTICLE VIII by the stockholders shall adversely affect any right or protection of a director of the Corporation existing by virtue of this ARTICLE VIII at the time of such amendment, repeal or modification.

**ARTICLE IX
AMENDMENT OF CERTIFICATE OF INCORPORATION**

The Corporation hereby reserves the right from time to time to amend, alter, change or repeal any provision contained in the Certificate of Incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law, and all rights, preferences, and privileges of whatsoever nature conferred upon the stockholders, directors or any other persons whomsoever by or pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this ARTICLE IX.

ARTICLE X

SECTION 1. DEFINITIONS.

As used in this ARTICLE X, the following capitalized terms have the following meanings when used herein with initial capital letters (and any references to any portions of Treas. Reg. § 1.382-2T shall include any successor provisions):

(a) "4.899-percent Transaction" means any Transfer described in clause (a) or (b) of Section 2 of this ARTICLE X.

(b) "4.899-percent Stockholder" means a Person or group of Persons that is a "5-percent stockholder" of the corporation pursuant to Treas. Reg. § 1.382-2T(g), as applied by replacing "5-percent" with "4.899-percent" and "five percent" with "4.899 percent," where applicable.

(c) "Agent" has the meaning set forth in Section 5 of this ARTICLE X.

(d) "Code" means the United States Internal Revenue Code of 1986, as amended. For the avoidance of doubt, Code also includes "An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018," (PL 115-97).

(e) "Corporation Security" or "Corporation Securities" means (i) any Stock, (ii) shares of preferred stock issued by the Corporation (other than preferred stock described in § 1504(a)(4) of the Code), and (iii) warrants, rights, or options (including options within the meaning of Treas. Reg. § 1.382-2T(h)(4)(v) or Treas. Reg. § 1.382-4(d)(9)) to purchase securities of the Corporation.

(f) "Effective Date" means the date of filing of this Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware.

(g) "Excess Securities" has the meaning set forth in Section 4 of this ARTICLE X.

(h) "Expiration Date" means the earliest of (i) the close of business on the date that is the third anniversary of the Effective Date, (ii) the repeal of Section 382 of the Code or any successor statute if the Board of Directors determines that this ARTICLE X is no longer necessary or desirable for the preservation of Tax Benefits, (iii) the close of business on the first day of a taxable year of the Corporation as to which the Board of Directors determines that no Tax Benefits may be carried forward, and (iv) such date as the Board of Directors shall fix in accordance with Section 12 of this ARTICLE X.

(i) "Percentage Stock Ownership" means the percentage Stock Ownership interest of any Person or group (as the context may require) for purposes of Section 382 of the Code as determined in accordance with Treas. Reg. § 1.382-2(a)(3), Treas. Reg. § 1.382-2T(g), (h), (j) and (k) and Treas. Reg. § 1.382-4, or any successor provisions and other pertinent Internal Revenue Service guidance.

(j) "Person" means any individual, partnership, joint venture, limited liability company, firm, corporation, unincorporated association or organization, trust or other entity or any group of such "Persons" having a formal or informal understanding among themselves to make a "coordinated acquisition" of shares within the meaning of Treas. Reg. § 1.382-3(a)(1) or who are otherwise treated as an "entity" within the meaning of Treas. Reg. § 1.382-3(a)(1), and shall include any successor (by merger or otherwise) of any such entity or group.

(k) "Prohibited Distributions" means any and all dividends or other distributions paid by the Corporation with respect to any Excess Securities received by a Purported Transferee.

(l) "Prohibited Transfer" means any Transfer or purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this ARTICLE X.

(m) "Public Group" has the meaning set forth in Treas. Reg. § 1.382-2T(f)(13).

(n) "Purported Transferee" has the meaning set forth in Section 4 of this ARTICLE X.

(o) "Remedial Holder" has the meaning set forth in Section 7 of this ARTICLE X.

(p) "Stock" means any interest that would be treated as "stock" of the Corporation pursuant to Treas. Reg. § 1.382-2T(f)(18).

(q) "Stock Ownership" means any direct or indirect ownership of Stock, including any ownership by virtue of application of constructive ownership rules, with such direct, indirect and constructive ownership determined under the provisions of Section 382 of the Code and the Treasury Regulations thereunder, including, for the avoidance of doubt, any ownership whereby a Person owns Stock pursuant to a "coordinated acquisition" treated as a single "entity" as defined in Treas. Reg. § 1.382-3(a)(1), or such Stock is otherwise aggregated with Stock owned by such Person pursuant to the provisions of Section 382 of the Code and the Treasury Regulations thereunder.

(r) "Tax Benefits" means the net operating loss carry forwards, capital loss carry forwards, general business credit carry forwards, alternative minimum tax credit carry forwards, foreign tax credit carry forwards, disallowed net business interest expense carry forwards under Section 163(j), any credits under Section 53, and any other item that may reduce or result in any credit against any income taxes owed by the Corporation or any of its subsidiaries or refundable credits, including, but not limited to, any item subject to limitation under Section 382 or Section 383 of the Code and the Treasury Regulations promulgated thereunder, and any loss or deduction attributable to a "net unrealized built-in loss" within the meaning of Section 382 of the Code and the Treasury Regulations promulgated thereunder.

(s) "Transfer" means, any direct or indirect sale, transfer, assignment, conveyance, pledge or other disposition, event or occurrence or other action taken by a Person, other than the Corporation, that alters the Percentage Stock Ownership of any Person or group, including, a transfer by gift or by operation of law. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treas. Reg. § 1.382-4(d)). For the avoidance of doubt, a Transfer shall not include the creation or grant of an option by the Corporation, nor shall a Transfer include the issuance of Stock by the Corporation.

(t) "Transferee" means any Person to whom Corporation Securities are Transferred.

(u) "Treasury Regulations" or "Treas. Reg." means the regulations, including temporary regulations or any successor regulations, promulgated under the Code, as amended from time to time.

SECTION 2. TRANSFER AND OWNERSHIP RESTRICTIONS. In order to preserve the Tax Benefits, from and after the Effective Date any attempted Transfer of Corporation Securities prior to the Expiration Date and any attempted Transfer of Corporation Securities pursuant to an agreement entered into prior to the Expiration Date shall be prohibited and void ab initio to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (a) any Person or Persons would become a 4.899-percent Stockholder or (b) the Percentage Stock Ownership in the Corporation of any 4.899-percent Stockholder would be increased. The prior sentence is not intended to prevent Corporation Securities from being DTC-eligible and shall not preclude the settlement of any transaction in Corporation Securities entered into through the facilities of a national securities exchange; provided, however, that the Corporation Securities and parties involved in such transaction shall remain subject to the provisions of this ARTICLE X in respect of such transaction.

SECTION 3. EXCEPTIONS.

(a) Notwithstanding anything to the contrary herein, Transfers to a Public Group (including a new Public Group created under Treas. Reg. § 1.382-2T (j) (3) (i)) shall be permitted.

(b) The restrictions set forth in Section 2 of this ARTICLE X shall not apply to an attempted Transfer that is a 4.899-percent Transaction if the transferor or the Transferee obtains the written approval of the Board of Directors or a duly authorized committee thereof. As a condition to granting its approval pursuant to this Section 3 of this ARTICLE X, the Board of Directors may, in its discretion, require (at the expense of the transferor and/or Transferee) an opinion of counsel selected by the Board of Directors that the Transfer shall not result in a limitation on the use of the Tax Benefits as a result of the application of Section 382 of the Code; provided that the Board of Directors may grant such approval notwithstanding the effect of such approval on the Tax Benefits if it determines that the approval is in the best interests of the Corporation. The Board of Directors may grant its approval in whole or in part with respect to such Transfer and may impose any conditions that it deems reasonable and appropriate in connection with such approval, including, without limitation, restrictions on the ability of any Transferee to Transfer Stock acquired through a Transfer. Approvals of the Board of Directors hereunder may be given prospectively or retroactively. The Board of Directors, to the fullest extent permitted by law, may exercise the authority granted by this ARTICLE X through duly authorized officers or agents of the Corporation. Nothing in this Section 3 of this ARTICLE X shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

SECTION 4. EXCESS SECURITIES.

(a) No employee or agent of the Corporation shall record any Prohibited Transfer, and the purported transferee of such a Prohibited Transfer (the "Purported Transferee") shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of the Corporation Securities which are the subject of the Prohibited Transfer (the "Excess Securities"). The Purported Transferee shall not be entitled, with respect to such Excess Securities, to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Securities shall be deemed to remain with the transferor unless and until the Excess Securities are transferred to the Agent pursuant to Section 5 of this ARTICLE X or until an approval is obtained under Section 3 of this ARTICLE X. After the Excess Securities have been acquired in a Transfer that is not a Prohibited Transfer, the Corporation Securities shall cease to be Excess Securities. For this purpose, any Transfer of Excess Securities not in accordance with the provisions of this Section 4 or Section 5 of this ARTICLE X shall also be a Prohibited Transfer.

(b) The Corporation may require as a condition to the registration of the Transfer of any Corporation Securities or the payment of any distribution on any Corporation Securities that the proposed Transferee or payee furnish to the Corporation all information reasonably requested by the Corporation with respect to its direct or indirect ownership interests in such Corporation Securities. The Corporation may make such arrangements or issue such instructions to its stock transfer agent as may be determined by the Board of Directors to be necessary or advisable to implement this ARTICLE X, including, without limitation, authorizing such transfer agent to require an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of Stock and other evidence that a Transfer will not be prohibited by this ARTICLE X as a condition to registering any transfer.

SECTION 5. TRANSFER TO AGENT. If the Board of Directors determines that a Transfer of Corporation Securities constitutes a Prohibited Transfer, then, upon written demand by the Corporation sent within thirty days of the date on which the Board of Directors determines that the attempted Transfer would result in Excess Securities, the Purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership of the Excess Securities within the Purported Transferee's possession or control, together with any Prohibited Distributions, to an agent designated by the Board of Directors (the "Agent"). The Agent shall thereupon sell to a buyer or buyers, which may include the Corporation, the Excess Securities transferred to it in one or more arm's-length transactions (on the public securities market on which such Excess Securities are traded, if possible, or otherwise privately); provided, however, that any such sale must not constitute a Prohibited Transfer and provided, further, that the Agent shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent's discretion, such sale or sales would disrupt the market for the Corporation Securities or otherwise would adversely affect the value of the Corporation Securities. If the Purported Transferee has resold the Excess Securities before receiving the Corporation's demand to surrender Excess Securities to the Agent, the Purported Transferee shall be deemed to have sold the Excess Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion of such sale proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Section 6 of this ARTICLE X if the Agent rather than the Purported Transferee had resold the Excess Securities.

SECTION 6. APPLICATION OF PROCEEDS AND PROHIBITED DISTRIBUTIONS. The Agent shall apply any proceeds of a sale by it of Excess Securities and, if the Purported Transferee has previously resold the Excess Securities, any amounts received by it from a Purported Transferee, together, in either case, with any Prohibited Distributions, as follows: (i) first, such amounts shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder; (ii) second, any remaining amounts shall be paid to the Purported Transferee, up to the amount paid by the Purported Transferee for the Excess Securities (or the fair market value at the time of the Transfer, in the event the purported Transfer of the Excess Securities was, in whole or in part, a gift, inheritance or similar Transfer) which amount (or fair market value) shall be determined at the discretion of the Board of Directors; and (iii) third, any remaining amounts shall be paid to one or more organizations selected by the Board of Directors which is described under Section 501(c)(3) of the Code (or any comparable successor provision) and contributions to which are eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2552 of the Code. The Purported Transferee of Excess Securities shall have no claim, cause of action or any other recourse whatsoever against any transferor of Excess Securities. The Purported Transferee's sole right with respect to such shares shall be limited to the amount payable to the Purported Transferee pursuant to this Section 6 of this ARTICLE X. In no event shall the proceeds of any sale of Excess Securities pursuant to this Section 6 of this ARTICLE X inure to the benefit of the Corporation or the Agent, except to the extent used to cover costs and expenses incurred by Agent in performing its duties hereunder.

SECTION 7. MODIFICATION OF REMEDIES FOR CERTAIN INDIRECT TRANSFERS. In the event of any Transfer that does not involve a transfer of Corporation Securities within the meaning of Delaware law but that would cause a 4.899-percent Stockholder to violate a restriction on Transfers provided for in this ARTICLE X, the application of Sections 5 and 6 of this ARTICLE X shall be modified as described in this Section 7 of this ARTICLE X. In such case, no such 4.899-percent Stockholder shall be required to dispose of any interest that is not a Corporation Security, but such 4.899-percent Stockholder and/or any Person whose ownership of Corporation Securities is attributed to such 4.899-percent Stockholder (such 4.899-percent Stockholder or other Person, a “Remedial Holder”) shall be deemed to have disposed of and shall be required to dispose of sufficient Corporation Securities (which Corporation Securities shall be disposed of in the inverse order in which they were acquired) to cause such 4.899-percent Stockholder, following such disposition, not to be in violation of this ARTICLE X. Such disposition shall be deemed to occur simultaneously with the Transfer giving rise to the application of this provision, and such number of Corporation Securities that are deemed to be disposed of shall be considered Excess Securities and shall be disposed of through the Agent as provided in Sections 5 and 6 of this ARTICLE X, except that the maximum aggregate amount payable to a Remedial Holder in connection with such sale shall be the fair market value of such Excess Securities at the time of the purported Transfer. A Remedial Holder shall not be entitled, with respect to such Excess Securities, to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, following the time of the purported Transfer. All expenses incurred by the Agent in disposing of such Excess Securities shall be paid out of any amounts due such 4.899-percent Stockholder or such other Person. The purpose of this Section 7 of this ARTICLE X is to extend the restrictions in Sections 2 and 5 of this ARTICLE X to situations in which there is a 4.899-percent Transaction without a direct Transfer of Corporation Securities, and this Section 7 of this ARTICLE X, along with the other provisions of this ARTICLE X, shall be interpreted to produce the same results, with differences as the context requires, as a direct Transfer of Corporation Securities.

SECTION 8. LEGAL PROCEEDINGS; PROMPT ENFORCEMENT. If the Purported Transferee fails to surrender the Excess Securities or the proceeds of a sale thereof, in either case, with any Prohibited Distributions, to the Agent within thirty days from the date on which the Corporation makes a written demand pursuant to Section 5 of this ARTICLE X (whether or not made within the time specified in Section 5 of this ARTICLE X), then the Corporation may take such actions as it deems appropriate to enforce the provisions hereof, including the institution of legal proceedings to compel the surrender. Nothing in this Section 8 of this ARTICLE X shall (i) be deemed inconsistent with any Transfer of the Excess Securities provided in this ARTICLE X being void ab initio, (ii) preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand or (iii) cause any failure of the Corporation to act within the time periods set forth in Section 5 of this ARTICLE X to constitute a waiver or loss of any right of the Corporation under this ARTICLE X. The Board of Directors may authorize such additional actions as it deems advisable to give effect to the provisions of this ARTICLE X.

SECTION 9. LIABILITY. To the fullest extent permitted by law, any stockholder subject to the provisions of this ARTICLE X who knowingly violates the provisions of this ARTICLE X and any Persons controlling, controlled by or under common control with such stockholder shall be jointly and severally liable to the Corporation for, and shall indemnify and hold the Corporation harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in, or elimination of, the Corporation’s ability to utilize its Tax Benefits, and attorneys’ and auditors’ fees incurred in connection with such violation.

SECTION 10. OBLIGATION TO PROVIDE INFORMATION. As a condition to the registration of the Transfer of any Stock, any Person who is a beneficial, legal or record holder of Stock, and any proposed Transferee and any Person controlling, controlled by or under common control with the proposed Transferee, shall provide such information as the Corporation may request from time to time in order to determine compliance with this ARTICLE X or the status of the Tax Benefits of the Corporation.

SECTION 11. LEGENDS. The Board of Directors may require that any certificates issued by the Corporation evidencing ownership of shares of Stock that are subject to the restrictions on transfer and ownership contained in this ARTICLE X bear the following legend:

“THE CERTIFICATE OF INCORPORATION OF THE COMPANY CONTAINS RESTRICTIONS PROHIBITING THE TRANSFER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) OF STOCK OF THE COMPANY (INCLUDING THE CREATION OR GRANT OF CERTAIN OPTIONS, RIGHTS AND WARRANTS) WITHOUT THE PRIOR AUTHORIZATION OF THE BOARD OF DIRECTORS OF THE COMPANY (THE “BOARD OF DIRECTORS”) IF SUCH TRANSFER AFFECTS THE PERCENTAGE OF STOCK OF THE CORPORATION (WITHIN THE MEANING OF Section 382 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) AND THE TREASURY REGULATIONS PROMULGATED THEREUNDER) THAT IS TREATED AS OWNED BY A 4.899-PERCENT STOCKHOLDER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION). IF THE TRANSFER RESTRICTIONS ARE VIOLATED, THEN THE TRANSFER WILL BE VOID AB INITIO AND THE PURPORTED TRANSFEREE OF THE STOCK WILL BE REQUIRED TO TRANSFER EXCESS SECURITIES (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) TO THE COMPANY’S AGENT. IN THE EVENT OF A TRANSFER WHICH DOES NOT INVOLVE SECURITIES OF THE COMPANY WITHIN THE MEANING OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE (“SECURITIES”) BUT WHICH WOULD VIOLATE THE TRANSFER RESTRICTIONS, THE PURPORTED TRANSFEREE (OR THE RECORD OWNER) OF THE SECURITIES THAT VIOLATE THE TRANSFER RESTRICTIONS WILL BE REQUIRED TO TRANSFER SUFFICIENT SECURITIES PURSUANT TO THE TERMS PROVIDED FOR IN THE CERTIFICATE OF INCORPORATION TO CAUSE THE 4.899-PERCENT STOCKHOLDER TO NO LONGER BE IN VIOLATION OF THE TRANSFER RESTRICTIONS. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO THE HOLDER OF RECORD OF THIS CERTIFICATE A COPY OF THE CERTIFICATE OF INCORPORATION CONTAINING THE ABOVE-REFERENCED TRANSFER RESTRICTIONS UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.”

The Board of Directors may also require that any certificates issued by the Corporation evidencing ownership of shares of Stock that are subject to conditions imposed by the Board of Directors under Section 3 of this ARTICLE X also bear a conspicuous legend referencing the applicable restrictions.

SECTION 12. AUTHORITY OF BOARD OF DIRECTORS.

(a) The Board of Directors shall have the power to determine all matters necessary for assessing compliance with this ARTICLE X, including, without limitation, (1) the identification of 4.899-percent Stockholders, (2) whether a Transfer is a 4.899-percent Transaction or a Prohibited Transfer, (3) the Percentage Stock Ownership in the Corporation of any 4.899-percent Stockholder, (4) whether an instrument constitutes a Corporation Security, (5) the amount (or fair market value) due to a Purported Transferee pursuant to Section 6 of this ARTICLE X, and (6) any other matters which the Board of Directors determines to be relevant; and the good faith determination of the Board of Directors on such matters shall be conclusive and binding for all the purposes of this ARTICLE X. In addition, the Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind by-laws, regulations and procedures of the Corporation not inconsistent with the provisions of this ARTICLE X for purposes of determining whether any Transfer of Corporation Securities would jeopardize or endanger the Corporation’s ability to preserve and use the Tax Benefits and for the orderly application, administration and implementation of this ARTICLE X.

(b) Nothing contained in this ARTICLE X shall limit the authority of the Board of Directors to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation and its stockholders in preserving the Tax Benefits. Without limiting the generality of the foregoing, in the event of a change in law making one or more of the following actions necessary or desirable, the Board of Directors may, by adopting a written resolution, (1) accelerate the Expiration Date, (2) modify the ownership interest percentage in the Corporation or the Persons or groups covered by this ARTICLE X, (3) modify the definitions of any terms set forth in this ARTICLE X or (4) modify the terms of this ARTICLE X as appropriate, in each case, in order to prevent an ownership change for purposes of Section 382 of the Code as a result of any changes in applicable Treasury Regulations or otherwise; provided, however, that the Board of Directors shall not cause there to be such acceleration or modification unless it determines, by adopting a written resolution, that such action is reasonably necessary or advisable to preserve the Tax Benefits or that the continuation of these restrictions is no longer reasonably necessary for the preservation of the Tax Benefits. Stockholders of the Corporation shall be notified of such determination through a filing with the Securities and Exchange Commission or such other method of notice as the Secretary of the Corporation shall deem appropriate.

(c) In the case of an ambiguity in the application of any of the provisions of this ARTICLE X, including any definition used herein, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances. In the event this ARTICLE X requires an action by the Board of Directors but fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this ARTICLE X. All such actions, calculations, interpretations and determinations which are done or made by the Board of Directors in good faith shall be conclusive and binding on the Corporation, the Agent, and all other parties for all other purposes of this ARTICLE X. The Board of Directors may delegate all or any portion of its duties and powers under this ARTICLE X to a committee of the Board of Directors as it deems necessary or advisable and, to the fullest extent permitted by law, may exercise the authority granted by this ARTICLE X through duly authorized officers or agents of the Corporation. Nothing in this ARTICLE X shall be construed to limit or restrict the Board of Directors in its exercise of its fiduciary duties under applicable law.

SECTION 13. RELIANCE. To the fullest extent permitted by law, the Corporation and the members of the Board of Directors shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the chief executive officer, the chief financial officer, the chief accounting officer or the corporate controller of the Corporation and the Corporation's legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents in making the determinations and findings contemplated by this ARTICLE X. The members of the Board of Directors shall not be responsible for any good faith errors made in connection therewith. For purposes of determining the existence and identity of, and the amount of any Corporation Securities owned by, any stockholder, the Corporation is entitled to rely on the existence and absence of filings of Schedule 13D or 13G under the Securities and Exchange Act of 1934, as amended (or similar filings), as of any date, subject to its actual knowledge of the ownership of Corporation Securities.

SECTION 14. BENEFITS OF THIS ARTICLE X. Nothing in this ARTICLE X shall be construed to give to any Person other than the Corporation or the Agent any legal or equitable right, remedy or claim under this ARTICLE X. This ARTICLE X shall be for the sole and exclusive benefit of the Corporation and the Agent.

SECTION 15. SEVERABILITY. The purpose of this ARTICLE X is to facilitate the Corporation's ability to maintain or preserve its Tax Benefits. If any provision of this ARTICLE X or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this ARTICLE X.

SECTION 16. WAIVER. With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this ARTICLE X, (i) no waiver will be effective unless expressly contained in a writing signed by the waiving party and (ii) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise or other indulgence.

DESCRIPTION OF CAPITAL STOCK

The following is a summary of all material characteristics of the capital stock of Acacia Research Corporation, as set forth in our Amended and Restated Certificate of Incorporation, as amended, or our Charter, and our Second Amended and Restated Bylaws, as amended, or our Bylaws. References to “we,” “us,” or “our” refer to Acacia Research Corporation. The summary does not purport to be complete and is qualified in its entirety by reference to our Charter and Bylaws, copies of which have been filed as exhibits to our public filings with the Securities and Exchange Commission.

Common Stock

General. We may issue shares of our common stock from time to time. We are authorized to issue 300,000,000 shares of common stock, par value \$0.001 per share.

Dividend Rights. Subject to preferences that may apply to any shares of preferred stock outstanding at the time, the holders of outstanding shares of our common stock are entitled to receive dividends out of funds legally available at the times and in the amounts that our board of directors may determine.

Voting Rights. Holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote at a meeting of stockholders and do not have cumulative voting rights.

No Preemptive or Similar Rights. Our common stock is not entitled to preemptive rights, and is not subject to redemption. There are no sinking fund provisions applicable to our common stock.

Conversion. Our common stock is not convertible into any other shares of our capital stock.

Right to Receive Liquidation Distributions. Upon our liquidation, dissolution or winding-up, the assets legally available for distribution to our stockholders would be distributable ratably among the holders of our common stock after payment of liquidation preferences, if any, on any outstanding shares of preferred stock and payment of claims of creditors.

Series A Convertible Preferred Stock

Pursuant to the terms of our Charter, our board of directors is authorized, subject to limitations prescribed by Delaware law, to issue up to 10,000,000 shares of preferred stock, par value \$0.001 per share, in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers, preferences and rights of the shares of each series and any of its qualifications, limitations or restrictions, in each case without further action by our stockholders. On November 18, 2019, we filed a Certificate of Designations, Preferences, and Rights of Series A Convertible Preferred Stock with the Secretary of State of the State of Delaware, or the Certificate of Designations establishing the rights, preferences, privileges, qualifications, restrictions and limitations relating to 350,000 shares of our Series A Convertible Preferred Stock, par value \$0.001 per share. Our Series A Convertible Preferred Stock rank senior to our common stock and any other class or series of capital stock, with respect to rights as to as to dividends, distributions, redemptions and payments upon the liquidation, dissolution and winding up of Acacia. Holders of our Series A Convertible Preferred Stock have the right to vote with holders of our common stock on an as-converted basis on all matters.

Delaware Law and Certain Charter and Bylaw Provisions

The provisions of Delaware law, as well as certain terms of our Charter and Bylaws, may have the effect of delaying, deferring or discouraging another person from acquiring control of us by means of a tender offer, a proxy contest or otherwise, or removing incumbent officers and directors. These provisions, some of which are summarized below, are expected to discourage certain types of coercive takeover practices and takeover bids that our board of directors may consider inadequate and to encourage any person seeking to acquire control of us to first negotiate with our board of directors.

Delaware Law. We are governed by the provisions of Section 203 of the DGCL. In general, Section 203 prohibits a public Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date such stockholder became an “interested stockholder.” A “business combination” includes mergers, asset sales or other transactions resulting in a financial benefit to the stockholder. An “interested stockholder” is a person who, together with affiliates and associates, owns, or within three years did, prior to the determination of interested stockholder status, own, 15% or more of the corporation’s outstanding voting stock.

Charter and Bylaw Provisions. Each of our Charter and Bylaws include a number of other provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in control or our management, including the following:

- *Issuance of Undesignated Preferred Stock.* Our board of directors has the authority, subject to the rights of the holders of our Series A Convertible Preferred Stock, to issue an additional 9,650,000 shares of preferred stock with rights and preferences designated from time to time by our board of directors.
- *Advance Notice Requirements for Stockholder Proposals and Director Nominations.* Our Bylaws provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders, or to nominate candidates for election as directors at our annual meeting of stockholders.
- *Amendment.* Our Charter provides that our Bylaws may only be amended by our board of directors or by the holders of 66 and 2/3 percent, or a super-majority, of the outstanding shares of our common stock, which makes it more difficult for our stockholders to amend or repeal our Bylaws.
- *No Cumulative Voting.* The DGCL provides that stockholders are denied the right to cumulate votes in the election of directors unless our Charter provides otherwise. Our Charter does not provide for cumulative voting.
- *Size of Board and Vacancies.* Our Charter and Bylaws provide that the exact number of directors on our board of directors is fixed exclusively by our board of directors. Newly created directorships resulting from any increase in our authorized number of directors, and any vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause, will generally be filled by a majority of our board of directors then in office.
- *Transfer Restrictions.* Our Charter generally restricts any direct or indirect transfers of our common stock if the effect would be to (i) increase the direct or indirect ownership of our common stock by any person or group from less than 4.899% to 4.899% or more of our common stock; or (ii) increase the percentage of our common stock owned directly or indirectly by a person or group owning or deemed to own 4.899% or more of our common stock.

Tax Benefits Preservation Plan

Under the terms of our Tax Benefits Preservation Plan, in general, if a person or group acquires beneficial ownership of 4.9% or more of the outstanding shares of our Common Stock without prior approval of our board of directors or without meeting certain exceptions, the rights would become exercisable and our stockholders (other than the acquiring person) will have the right to purchase securities from us at a discount to such securities’ fair market value, thus causing substantial dilution to the acquiring person. As a result, the Tax Benefits Preservation Plan may have the effect of inhibiting or impeding a change in control not approved by our board of directors.

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the "**Agreement**") is made as of the ____ day of _____, ____ by and between Acacia Research Corporation, a Delaware corporation (the "**Company**"), and _____ ("**Indemnitee**").

WHEREAS, directors, officers, and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself;

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors 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;

WHEREAS, the Board of Directors of the Company (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, Indemnitee does not regard the protection available under the Company's Bylaws and insurance as adequate in the present circumstances, may not be willing to serve as an officer or director without adequate protection, and is willing to serve on the condition that he be so indemnified;

WHEREAS, although the Bylaws of the Company require indemnification of the officers and directors of the Company or any other Enterprise, and Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "**DGCL**"), the Bylaws and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification; and

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

NOW, THEREFORE, in consideration of Indemnitee's agreement to serve as a [director] [officer] [employee] [agent] [fiduciary] after the date hereof, the parties hereto agree as follows:

1. Definitions. For purposes of this Agreement:

- (a) "**Corporate Status**" describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or any other Enterprise.
- (b) "**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.

(c) **"Enterprise"** shall mean the Company, any wholly- or majority-owned subsidiary of the Company and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other entity or enterprise that Indemnitee is or was serving at the request or consent of the Company, or any subsidiary, as a director, officer, employee, agent or fiduciary.

(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 that may be incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding. Expenses also shall include the foregoing 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. 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, any other Enterprise, or Indemnitee in any matter material to either such party (other than with respect to matters concerning 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, any other Enterprise, or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(f) **"Proceeding"** includes 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 by or in the right of the Company, or any other Enterprise, or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of the fact that Indemnitee is or was acting in his or her Corporate Status, by reason of any action taken by him or of any inaction on his part while acting in his or her Corporate Status, or by reason of the fact that he or she is or was serving at the request of the Company, or any other Enterprise, as a director, officer, employee, agent or fiduciary; in each case whether or not he was or is acting or serving in any such capacity before or after the date of this Agreement and whether or not he was or is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by Indemnitee pursuant to Section 8 of this Agreement to enforce his rights under this Agreement.

2. Indemnity of Indemnitee. The Company hereby agrees to defend, hold harmless and indemnify Indemnitee to the fullest extent permitted by applicable law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 2(a) if, by reason of his or her Corporate Status or otherwise, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding other than a Proceeding by or in the right of the Company. Pursuant to this Section 2(a), Indemnitee shall be indemnified against all Expenses, judgments, penalties, excise taxes, fines and amounts paid or to be paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding or any claim, issue or matter therein until such time as it has been determined in accordance with Section 7 or 8 that Indemnitee (i) did not act in good faith and did not act in a manner Indemnitee not unreasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, or (ii) did not have a reasonable cause to believe Indemnitee's conduct was lawful.

(b) Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 2(b) if, by reason of Indemnitee's Corporate Status or otherwise, Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 2(b), Indemnitee shall be indemnified against all Expenses, judgments, penalties, fines, excise taxes and amounts paid or to be paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by Indemnitee, or on Indemnitee's behalf, in connection with such Proceeding or any claim, issue or matter therein until such time as as it has been determined in accordance with Section 7 or 8 that Indemnitee (i) did not act in good faith and did not act in a manner Indemnitee not unreasonably believed to be in or not opposed to the best interests of the Company, or (ii) did not have a reasonable cause to believe Indemnitee's conduct was lawful; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which it shall be finally determined (under the procedures, and subject to the presumptions, set forth in Section 7 and Section 8 hereof), that Indemnitee is liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

(c) Overriding Right to Indemnification if Successful on the Merits. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status or otherwise, a party to and is successful, on the merits or otherwise, in any Proceeding, he shall be indemnified to the maximum extent permitted by applicable law, as such may be amended from time to time, against all Expenses, judgments, penalties, excise taxes, fines and amounts paid or to be paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by him or on his behalf 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 Indemnitee or on Indemnitee's behalf in connection with (i) each successfully resolved claim, issue or matter and (ii) each other claim, issue or matter not resolved in Indemnitee's favor that does not or did not involve a violation of law or a demonstration of bad faith by Indemnitee. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

3. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 2 of this Agreement, and subject to the other provisions of this Agreement, the Company shall, and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, excise taxes, fines and amounts paid or to be paid in settlement actually and reasonably incurred by him or on his behalf if, by reason of his Corporate Status or otherwise, he or she is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the alleged or actual negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Section 7 and Section 8 hereof) to be unlawful.

4. Contribution.

(a) Whether or not the indemnification provided in Section 2 and Section 3 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company or any other Enterprise is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment, and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. Neither the Company nor any other Enterprise shall enter into any settlement of any action, suit or proceeding in which the Company or any other Enterprise is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company or any other Enterprise is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, penalties, excise taxes, fines and amounts paid or to be paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company or any other Enterprise and all officers, directors or employees of the Company or any other Enterprise, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company or any other Enterprise and all officers, directors or employees of the Company or any other Enterprise other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations which the law may require to be considered. The relative fault of the Company or any other Enterprise and all officers, directors or employees of the Company or any other Enterprise, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claim of contribution brought by officers, directors, employees, or former employees of the Company and any other Enterprise, other than Indemnitee, based upon a claim of liability which, if made against Indemnitee directly, would be indemnifiable under this Agreement.

(d) 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 (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) 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 (together with its directors, officers, employees and agents) 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).

5. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status or otherwise, a witness 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.

6. Advancement of Expenses. Notwithstanding any other provision of this Agreement, to the extent not prohibited by law, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status or otherwise within twenty (20) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and, upon request of the Company, shall include an undertaking to repay the advancement of Expenses if and to the extent that it is finally determined by a court of competent jurisdiction in a non-appealable decision, that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 6 shall be unsecured, interest-free and without regard to Indemnitee's ability to repay the Expenses. Advances shall include any and all Expenses actually and reasonably incurred by Indemnitee pursuing an action to enforce Indemnitee's right to indemnification under this Agreement, or otherwise and this right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advances claimed. The right to advances under this Section shall continue until final disposition of any Proceeding, including any appeal therein.

7. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:

(a) Indemnitee shall give the Company notice in writing as soon as practicable of any claim made against Indemnitee for which indemnification will or could be sought under this Agreement. Such notice shall include Indemnitee's request for indemnification and such documentation and information as is reasonably available to Indemnitee and as is reasonably necessary for the Company to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification. Failure to provide the notice required hereby shall not impair Indemnitee's rights of indemnification and contribution under this Agreement except to the extent that such failure to provide notice actually prejudices the rights of the Company to defend any action or proceeding which is the basis of the claimed indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 7(a) hereof, a determination, if, and only if, required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four (4) methods within thirty (30) days of receipt of such written request, which shall be at the election of the Board of Directors: (i) by a majority vote of the Disinterested Directors, even though less than a quorum, (ii) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, (iii) if there are no Disinterested Directors or if the Disinterested Directors so direct, by Independent Counsel, in a written opinion of such counsel to the Board of Directors and Indemnitee, or (iv) if so directed by the Board of Directors, by the stockholders of the Company.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 7(b) hereof, the Independent Counsel shall be selected as provided in this Section 7(c). The Independent Counsel shall be selected by the Board of Directors. Indemnitee may, within 10 days after such written notice of selection shall have been given, deliver to the Company, 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 counsel so selected does not satisfy the definition of "Independent Counsel" set forth at Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection made in accordance with the foregoing sentence, the person so selected shall act as Independent Counsel. In the event of a proper and timely objection, the Independent Counsel 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 thirty (30) days after submission by Indemnitee of a written request for indemnification pursuant to Section 7(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by Indemnitee to the Company'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 7(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 7(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 7(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder with respect to Section 7(b), the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or Independent 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 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.

(e) In making a determination with respect to whether Indemnitee acted in good faith and in a manner that Indemnitee not unreasonably believed to be in or not opposed to the best interests of the Company, the person or persons or entity making such determination shall presume that Indemnitee acted in good faith and in a manner that Indemnitee not unreasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence which shall be determined only by a court of competent jurisdiction. Any action, or failure to act, by Indemnitee based on Indemnitee's good faith reliance on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise 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 Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise shall not, in and of itself, constitute grounds for an adverse determination with respect to whether Indemnitee acted in good faith and in a manner that Indemnitee not unreasonably believed to be in or not opposed to the best interests of the Company. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

(f) If the person, persons or entity empowered or selected under Section 7(b) 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 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 sixty 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 such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto.

(g) 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 Independent Counsel, member of the Board of Directors or stockholder of the Company shall act reasonably and in good faith in making a determination regarding Indemnitee's entitlement to indemnification under this Agreement. 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.

(h) In the event the Company shall be obligated under Section 5 hereof to pay the Expenses of any proceeding against Indemnitee, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, with counsel approved by Indemnitee, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the 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 (i) Indemnitee shall have the right to employ his counsel in any such proceeding at Indemnitee's expense; and (ii) if (A) the employment of counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have not unreasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense, or (C) 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.

(i) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(j) 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 under this Agreement or create a presumption that Indemnitee did not act in good faith and in a manner which he not unreasonably 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.

8. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 7 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 6 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 7(b) of this Agreement within sixty (60) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within forty-five (45) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 7 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification. The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 7(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 8 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 7(b).

(c) If a determination shall have been made pursuant to Section 7(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 8, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 8, seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his behalf, in advance, any and all Expenses actually and reasonably incurred by him in such judicial adjudication, regardless of whether Indemnitee is ultimately determined to be entitled to such indemnification, advancement of Expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 8 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. 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 therefore) 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 is ultimately determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) 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.

9. Non-Exclusivity; Survival of Rights; Insurance.

(a) The rights of indemnification 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 certificate of incorporation of the Company, the Bylaws, any agreement, a vote of stockholders, 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 or otherwise prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy. Notwithstanding anything in this Agreement to the contrary, the indemnification and contribution provided for in this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of Indemnitee or any of Indemnitee's agents.

(b) To the extent that the Company, or any entity within the Enterprise, maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that 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 director, officer, employee, agent or fiduciary 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 shall use commercially reasonable efforts to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(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, who shall execute all papers reasonably required and take all action reasonably 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 hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any Company insurance policy, Company contract, Company agreement or otherwise (except to the extent that Indemnitee is required (by court order or otherwise) to return such payment or to surrender it to the Company).

(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, 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, partnership, joint venture, trust, employee benefit plan or other enterprise (except to the extent that Indemnitee is required (by court order or otherwise) to return such payment or to surrender it to the Company).

(f) D&O Insurance. Pursuant to Section 9(b) of the Agreement, Indemnitee currently is covered by one or more insurance policies maintained by Company that provide liability insurance for directors, officers, employees, agents or fiduciaries of Company (whether in each case primary or excess in nature, collectively "**D&O Insurance**"), including without limitation that certain policy number QPL0453702 issued by QBE Insurance Corporation having a policy period from January 31, 2018 to January 31, 2019 (as the same may be amended, extended, renewed or restated, the "**QBE 2018 Policy**").

(g) Undertaking to Provide Suitable Coverage. During the period of Indemnitee's service as an officer, director, manager or trustee of Company and for a minimum period of five (5) years thereafter, Company at all times shall procure and maintain continuing D&O Insurance customary for listed public companies and complying at a minimum to the following requirements:

- i. Having aggregate policy limits of not less than \$50 million in total (i.e., primary coverage in combination with any excess), with not less than \$10 million in Side A coverage.
- ii. Containing insuring clauses, limitations on exclusions and endorsements substantially consistent with those set forth in the QBE 2018 Policy including without limitation (i) drop down advancement protection to insured persons in the event Company fails to respond to requests for indemnification, (ii) inclusion of former officers and directors as insured persons, and (iii) extended reporting periods currently specified by endorsement in the QBE 2018 Policy.
- iii. Placed with insurer(s) having an A.M. Best financial strength rating of A- or better.

10. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity:

(a) 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, if a court of competent jurisdiction finally determines in a non-appealable decision that each of the material assertions made by Indemnitee in such Proceeding (or any part of any Proceeding) was not made in good faith or was frivolous;

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

(c) in connection with any Proceeding for which a final, non-appealable judgment has been rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law; or

(d) 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 (other than any Proceeding initiated by Indemnitee pursuant to Section 8(d), which shall be governed by the terms of such section), unless (i) the Board of Directors of the Company 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.

11. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue until six (6) years after the end of any period Indemnitee is an officer or director of the Company or any other Enterprise (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) but shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 8 hereof) by reason of his Corporate Status or otherwise, whether or not he is acting or serving in any such capacity at the time any liability or Expense is incurred for which indemnification can be provided under this Agreement, notwithstanding such six (6) year period. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives. The Company may not assign this agreement and/or the obligations hereunder to any other entity without the express written consent of Indemnitee.

12. Security. To the extent requested by Indemnitee and approved by the Board of Directors of the Company, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of Indemnitee.

13. Enforcement.

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

(b) 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.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

15. Modification and Waiver. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

16. Notice By Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder unless Indemnitee has actual knowledge that Company is already in receipt of any such document relating to any Proceeding or matter. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. Unless otherwise provided herein, any notice required or permitted under this Agreement shall be deemed effective upon the earlier of (a) actual receipt, or (b) (i) one (1) business day after the date of delivery by confirmed facsimile transmission, (ii) one (1) business day after the business day of deposit with a nationally recognized overnight courier service for next day delivery, freight prepaid, or (iii) three (3) business days after deposit with the United States Post Office for delivery by registered or certified mail, postage prepaid. Any such notice shall be in writing and shall be addressed to the party to be notified at the address indicated for such party indicated on the signature pages or exhibits hereto, as otherwise set forth in this Section 17, or at such other address as such party may designate by ten (10) days' advance written notice to the other parties. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee signature hereto;

(b) To the Company at the address set forth below Company signature hereto;

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Headings. 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.

20. Governing Law and Consent to Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. 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 only in the Chancery Court of the State of Delaware (the "**Delaware Court**"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware 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 the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

21. Construction. The parties acknowledge that both parties have contributed to the drafting of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

INDEMNITEE:

Signature: _____

Name Typed or Printed: _____

Address:

COMPANY:

ACACIA RESEARCH CORPORATION

By: _____

Name: _____

Title: _____

Address:

LEASE

BETWEEN

JAMBOREE CENTER 4 LLC

AND

ACACIA RESEARCH CORPORATION

**LEASE
(Short Form)**

THIS LEASE is made as of June 7, 2019, by and between **JAMBOREE CENTER 4 LLC**, a Delaware limited liability company, hereafter called "**Landlord**," and **ACACIA RESEARCH CORPORATION**, a Delaware corporation, hereafter called "**Tenant**."

ARTICLE 1. BASIC LEASE PROVISIONS

Each reference in this Lease to the "**Basic Lease Provisions**" shall mean and refer to the following collective terms, the application of which shall be governed by the provisions in the remaining Articles of this Lease.

1. **Tenant's Trade Name:** N/A
2. **Premises:** Suite No. 550
Address of Building: 4 Park Plaza, Irvine, CA 92614
Project Description: Jamboree Center
(The Premises are more particularly described in Section 2.1).
3. **Use of Premises:** General office and for no other use.
4. **Commencement Date:** August 1, 2019
5. **Lease Term:** 60 months, plus such additional days as may be required to cause this Lease to expire on the final day of the calendar month.
6. **Basic Rent:**

Months of Term or Period	Monthly Rate Per Rentable Square Foot	Monthly Basic Rent (rounded to the nearest dollar)
1 to 12	\$3.15	\$26,123.00
13 to 24	\$3.29	\$27,284.00
25 to 36	\$3.44	\$28,528.00
37 to 48	\$3.59	\$29,772.00
49 to 60	\$3.75	\$31,099.00

Notwithstanding the above schedule of Basic Rent to the contrary, as long as Tenant is not in Default (as defined in Section 14.1) under this Lease, Tenant shall be entitled to an abatement of one (1) full calendar month of Basic Rent in the amount of \$26,123.00 (the "**Abated Basic Rent**") for the first full calendar month of the Term (the "**Abatement Period**"). In the event Tenant Defaults at any time during the Term, all Abated Basic Rent shall immediately become due and payable. The payment by Tenant of the Abated Basic Rent in the event of a Default shall not limit or affect any of Landlord's other rights, pursuant to this Lease or at law or in equity. Only Basic Rent shall be abated during the Abatement Period and all other additional rent and other costs and charges specified in this Lease shall remain as due and payable pursuant to the provisions of this Lease.

7. **Property Tax Base:** The Property Taxes per rentable square foot incurred by Landlord and attributable to the twelve month period ending June 30, 2020 (the "Base Year").

Project Cost Base: The Project Costs per rentable square foot incurred by Landlord and attributable to the Base Year.

Expense Recovery Period: Every twelve month period during the Term (or portion thereof during the first and last Lease years) ending June 30.

8. **Floor Area of Premises:** approximately 8,293 rentable square feet (Landlord and Tenant stipulate and agree that the Floor Area of Premises is correct).

Floor Area of Building: approximately 409,411 rentable square feet

9. **Security Deposit:** \$34,209.00

10. **Broker(s):** Irvine Management Company ("**Landlord's Broker**") is the agent of Landlord exclusively and Rand Partners ("**Tenant's Broker**") is the agent of Tenant exclusively.

11. **Parking:** 28 parking passes in accordance with the provisions set forth in **Exhibit F** to this Lease.

12. **Address for Payments and Notices:**

LANDLORD

TENANT

Payment Registration Address:

ACACIA RESEARCH CORPORATION
4 Park Plaza, Suite 550
Irvine, CA 92614

Email tenantportal@irvinecompany.com to request an account for the Tenant Payment Portal.

Notice Address:

THE IRVINE COMPANY LLC
5 Park Plaza, Suite 100
Irvine, CA 92614
Attn: Property Manager

with a copy of notices to:

THE IRVINE COMPANY LLC
550 Newport Center Drive
Newport Beach, CA 92660
Attn: Senior Vice President, Property
Operations Irvine Office Properties

13. **List of Lease Exhibits** (all exhibits, riders and addenda attached to this Lease are hereby incorporated into and made a part of this Lease):

Exhibit A	Description of Premises
Exhibit B	Operating Expenses
Exhibit C	Utilities and Services
Exhibit D	Tenant's Insurance
Exhibit E	Rules and Regulations
Exhibit F	Parking
Exhibit G	Additional Provisions

ARTICLE 2. PREMISES

2.1. LEASED PREMISES. Landlord leases to Tenant and Tenant leases from Landlord the Premises shown in **Exhibit A** (the "**Premises**"), containing approximately the floor area set forth in Item 8 of the Basic Lease Provisions (the "**Floor Area**"). The Premises are located in the building identified in Item 2 of the Basic Lease Provisions (the "**Building**"), which is a portion of the project described in Item 2 (the "**Project**").

2.2. ACCEPTANCE OF PREMISES. Tenant acknowledges that neither Landlord nor any representative of Landlord has made any representation or warranty with respect to the Premises, the Building or the Project or the suitability or fitness of either for any purpose, except as set forth in this Lease. The taking of possession or use of the Premises by Tenant for any purpose other than construction shall conclusively establish that the Premises and the Building were in satisfactory condition and in conformity with the provisions of this Lease in all respects. Following Landlord's substantial completion of the ReadyNow improvements in the Premises, Tenant shall accept such improvements in their existing condition, and shall waive any right or claim against Landlord arising out of the condition of the Premises. Nothing contained in this Section 2.2 shall affect the commencement of the Term or the obligation of Tenant to pay rent.

ARTICLE 3. TERM

3.1. GENERAL. The term of this Lease ("**Term**") shall commence on the date as set forth in Item 4 of the Basic Lease Provisions (the "**Commencement Date**") and shall end upon the expiration of the period set forth in Item 5 of the Basic Lease Provisions ("**Expiration Date**").

3.2. DELAY IN POSSESSION. If Landlord, for any reason whatsoever, cannot deliver possession of the Premises to Tenant on or before the Commencement Date set forth in Item 4 of the Basic Lease Provisions, this Lease shall not be void or voidable nor shall Landlord be liable to Tenant for any resulting loss or damage.

ARTICLE 4. RENT AND OPERATING EXPENSES

4.1. BASIC RENT. From and after the Commencement Date, Tenant shall pay to Landlord without deduction or offset a Basic Rent for the Premises in the total amount shown (including subsequent adjustments, if any) in Item 6 of the Basic Lease Provisions (the "**Basic Rent**"). If the Commencement Date is other than the first day of a calendar month, any rental adjustment shown in Item 6 shall be deemed to occur on the first day of the next calendar month following the specified monthly anniversary of the Commencement Date. The Basic Rent shall be due and payable in advance commencing on the Commencement Date and continuing thereafter on the first day of each successive calendar month of the Term, as prorated for any partial month. No demand, notice or invoice shall be required. An installment in the amount of 1 full month's Basic Rent at the initial rate specified in Item 6 of the Basic Lease Provisions shall be delivered to Landlord concurrently with Tenant's execution of this Lease.

4.2. OPERATING EXPENSES. Tenant shall pay Tenant's Share of Operating Expenses in accordance with **Exhibit B** of this Lease.

4.3. SECURITY DEPOSIT. Concurrently with Tenant's delivery of this Lease, Tenant shall deposit with Landlord the sum, if any, stated in Item 9 of the Basic Lease Provisions (the "**Security Deposit**"), to be held by Landlord as security for the full and faithful performance of Tenant's obligations under this Lease, to pay any rental sums, including without limitation such additional rent as may be owing under any provision hereof, and to maintain the Premises as required by this Lease. Upon any breach of the foregoing obligations by Tenant, Landlord may apply all or part of the Security Deposit as full or partial compensation. If any portion of the Security Deposit is so applied, Tenant shall within 5 days after written demand by Landlord deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. In no event may Tenant utilize all or any portion of the Security Deposit as a payment toward any rental sum due under this Lease. Any unapplied balance of the Security Deposit shall be returned to Tenant or, at Landlord's option, to the last assignee of Tenant's interest in this Lease within 30 days following the termination of this Lease and Tenant's vacation of the Premises. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, or any similar or successor laws now or hereafter in effect.

ARTICLE 5. USES

5.1. USE. Tenant shall use the Premises only for the purposes stated in Item 3 of the Basic Lease Provisions and for no other use whatsoever. Tenant shall not do or permit anything to be done in or about the Premises which will in any way interfere with the rights or quiet enjoyment of other occupants of the Building or the Project, or use or allow the Premises to be used for any unlawful purpose, nor shall Tenant permit any nuisance in the Premises or the Project. Tenant shall comply at its expense with all present and future laws, ordinances and requirements of all governmental authorities that pertain to Tenant or its use of the Premises, and with all energy usage reporting requirements of Landlord. Pursuant to California Civil Code § 1938, Landlord hereby states that the Premises have not undergone inspection by a Certified Access Specialist (CASp) (defined in California Civil Code § 55.52(a)(3)). Pursuant to Section 1938 of the California Civil Code, Landlord hereby provides the following notification to Tenant: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the premises." If Tenant requests to perform a CASp inspection of the Premises, Tenant shall, at its cost, retain a CASp approved by Landlord (provided that Landlord may designate the CASp, at Landlord's option) to perform the inspection of the Premises at a time agreed upon by the parties. Tenant shall provide Landlord with a copy of any report or certificate issued by the CASp (the "**CASp Report**") and Tenant shall, at its cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CASp Report, notwithstanding anything to the contrary in this Lease. Tenant agrees to keep the information in the CASp Report confidential except as necessary for the Tenant to complete such modifications.

5.2. SIGNS. Landlord shall affix and maintain a sign (restricted solely to Tenant's name as set forth herein or such other name as Landlord may consent to in writing) adjacent to the entry door of the Premises, together with a directory strip listing Tenant's name as set forth herein in the lobby directory of the Building. Tenant shall not place or allow to be placed any other sign, decoration or advertising matter of any kind that is visible from the exterior of the Premises.

5.3. HAZARDOUS MATERIALS. Tenant shall not generate, handle, store or dispose of hazardous or toxic materials (as such materials may be identified in any federal, state or local law or regulation) in the Premises or Project without the prior written consent of Landlord. Tenant acknowledges that it has read, understands and, if applicable, shall comply with the provisions of **Exhibit H** to this Lease, if that Exhibit is attached.

ARTICLE 6. LANDLORD SERVICES

6.1. UTILITIES AND SERVICES. Landlord and Tenant shall be responsible to furnish those utilities and services to the Premises to the extent provided in **Exhibit C**, subject to the conditions and payment obligations and standards set forth in this Lease. Landlord's failure to furnish, or any interruption, diminishment or termination of, services due to the application of laws, the failure of any equipment, the performance of repairs, improvements or alterations, utility interruptions or the occurrence of an event of force majeure (defined in Section 20.8) shall not render Landlord liable to Tenant, constitute a constructive eviction of Tenant, give rise to an abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement.

6.2. OPERATION AND MAINTENANCE OF COMMON AREAS. During the Term, Landlord shall operate all Common Areas within the Building and the Project. The term "**Common Areas**" shall mean all areas within the Building, Project and other buildings in the Project which are not held for exclusive use by persons entitled to occupy space.

6.3. USE OF COMMON AREAS. The occupancy by Tenant of the Premises shall include the use of the Common Areas in common with Landlord and with all others for whose convenience and use the Common Areas may be provided by Landlord, subject, however, to compliance with Rules and Regulations described in Article 17 below. Landlord shall at all times during the Term have exclusive control of the Common Areas, and may restrain or permit any use or occupancy. Landlord may temporarily close any portion of the Common Areas for repairs, remodeling and/or alterations, to prevent a public dedication or the accrual of prescriptive rights, or for any other reasonable purpose.

ARTICLE 7. REPAIRS AND MAINTENANCE

7.1. TENANT'S MAINTENANCE AND REPAIR. Subject to Articles 11 and 12, Tenant at its sole expense shall make all repairs necessary to keep the Premises and all improvements and fixtures therein in good condition and repair. Tenant's maintenance obligation shall include without limitation all appliances, interior glass, doors, door closures, hardware, fixtures, electrical, plumbing, fire extinguisher equipment and other equipment installed in the Premises, together with any supplemental HVAC equipment servicing only the Premises. Should Landlord or its management agent agree to make a repair on behalf of Tenant and at Tenant's request, Tenant shall promptly reimburse Landlord as additional rent for all reasonable costs incurred (including the standard supervision fee) upon submission of an invoice.

7.2. LANDLORD'S MAINTENANCE AND REPAIR. Subject to Articles 11 and 12, Landlord shall provide service, maintenance and repair with respect to the heating, ventilating and air conditioning ("**HVAC**") equipment of the Building (exclusive of any supplemental HVAC equipment servicing only the Premises) and shall maintain in good repair the Common Areas, roof, foundations, footings, the exterior surfaces of the exterior walls of the Building (including exterior glass), and the structural, electrical, mechanical and plumbing systems of the Building (including elevators, if any, serving the Building), except to the extent provided in Section 7.1 above. Notwithstanding any provision of the California Civil Code or any similar or successor laws to the contrary, Tenant understands that it shall not make repairs at Landlord's expense or by rental offset. Except as provided in Section 11.1 and Article 12 below, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements to any portion of the Building, including repairs to the Premises, nor shall any related activity by Landlord constitute an actual or constructive eviction. Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932, and Sections 1941 and 1942 of the California Civil Code, or any similar or successor laws now or hereafter in effect.

7.3. ALTERATIONS. Tenant shall make no alterations, additions, decorations, or improvements (collectively referred to as “ **Alterations**”) to the Premises without the prior written consent of Landlord. Landlord may impose, as a condition to its consent, any requirements that Landlord in its discretion may deem reasonable or desirable. Tenant shall use Landlord’s designated mechanical and electrical contractors, obtain all required permits for the Alterations and shall perform the work in compliance with all applicable laws, regulations and ordinances with contractors reasonably acceptable to Landlord. Landlord shall be entitled to a supervision fee in the amount of 5% of the cost of the Alterations. Landlord may elect to cause its architect to review Tenant’s architectural plans, and the reasonable cost of that review shall be reimbursed by Tenant. Should the Alterations proposed by Tenant and consented to by Landlord change the floor plan of the Premises, then Tenant shall, at its expense, furnish Landlord with as-built drawings and CAD disks compatible with Landlord’s systems. Unless Landlord otherwise agrees in writing, all Alterations affixed to the Premises, including without limitation all Tenant Improvements constructed pursuant to the Work Letter (except as otherwise provided in the Work Letter), but excluding moveable trade fixtures and furniture, shall become the property of Landlord and shall be surrendered with the Premises at the end of the Term, except that Landlord may, by notice to Tenant given at the time of Landlord’s approval, require Tenant to remove by the Expiration Date or sooner termination date of this Lease, all or any Alterations (including without limitation any Tenant Improvements constructed pursuant to the Work Letter) installed either by Tenant or by Landlord at Tenant’s request (collectively, the “**Required Removables**”). In connection with its removal of Required Removables, Tenant shall repair any damage to the Premises arising from that removal and shall restore the affected area to its pre-existing condition, reasonable wear and tear excepted.

7.4. MECHANIC’S LIENS. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Tenant. In the event that Tenant shall not, within 15 days following the imposition of any lien, cause the lien to be released of record by payment or posting of a proper bond in accordance with California Civil Code Section 8424 or any successor statute, Landlord shall have, in addition to all other available remedies, the right to cause the lien to be released by any means it deems proper, including payment of or defense against the claim giving rise to the lien. All expenses so incurred by Landlord shall be reimbursed by Tenant promptly following Landlord’s demand. Tenant shall give Landlord no less than 20 days’ prior notice in writing before commencing construction of any kind on the Premises.

7.5. ENTRY AND INSPECTION. Landlord shall at all reasonable times and with reasonable prior verbal notice, except in emergencies or to provide Building services, have the right to enter the Premises to inspect them, to supply services in accordance with this Lease, to make repairs and renovations as reasonably deemed necessary by Landlord, and to submit the Premises to prospective or actual purchasers or encumbrance holders (or, during the final twelve months of the Term or when an uncured Default exists, to prospective tenants), all without being deemed to have caused an eviction of Tenant and without abatement of rent except as provided elsewhere in this Lease.

ARTICLE 8. SPACE PLANNING AND SUBSTITUTION

Landlord shall have the right, upon providing not less than 45 days written notice, to move Tenant to other space of comparable size in the Building or in the Project. The new space shall be provided with improvements of comparable quality to those within the Premises. Landlord shall pay the reasonable out-of-pocket costs to relocate and reconnect Tenant’s personal property and equipment within the new space. Landlord shall also reimburse Tenant for such other reasonable out-of-pocket costs that Tenant may incur in connection with the relocation. Within 10 days following request by Landlord, Tenant shall execute an amendment to this Lease prepared by Landlord to memorialize the relocation.

ARTICLE 9. ASSIGNMENT AND SUBLETTING

9.1. RIGHTS OF PARTIES. Tenant shall not, directly or indirectly, assign, sublease, transfer or encumber any interest in this Lease or allow any third party to use any portion of the Premises (collectively or individually, a "**Transfer**") without the prior written consent of Landlord, which consent shall not be unreasonably withheld if Landlord does not exercise its recapture rights. Tenant agrees that it is not unreasonable for Landlord to withhold consent to a Transfer to a proposed assignee or subtenant who is an existing tenant or occupant of the Building or Project or to a prospective tenant with whom Landlord or Landlord's affiliate has been actively negotiating. Within 30 days after receipt of executed copies of the transfer documentation and such other information as Landlord may request, Landlord shall either: (a) consent to the Transfer by execution of a consent agreement in a form reasonably designated by Landlord; (b) refuse to consent to the Transfer; or (c) recapture the portion of the Premises that Tenant is proposing to Transfer. Tenant hereby waives the provisions of Section 1995.310 of the California Civil Code, or any similar or successor Laws, now or hereinafter in effect, and all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed transferee. In no event shall any Transfer release or relieve Tenant from any obligation under this Lease, as same may be amended. Tenant shall pay Landlord a review fee of \$1,000.00 for Landlord's review of any requested Transfer. Tenant shall pay Landlord, as additional Rent, 50% of all rent and other consideration which Tenant receives as a result of a Transfer that is in excess of the Rent payable to Landlord for the portion of the Premises and Term covered by the Transfer. If Tenant is in Default, Landlord may require that all sublease payments be made directly to Landlord, in which case Tenant shall receive a credit against Rent in the amount of Tenant's share of payments received by Landlord.

9.2. PERMITTED TRANSFER. Notwithstanding the foregoing, Tenant may assign this Lease to a successor to Tenant by merger, consolidation or the purchase of substantially all of Tenant's assets, or assign this Lease or sublet all or a portion of the Premises to an Affiliate (defined below), without the consent of Landlord, provided that all of the following conditions are satisfied (a "**Permitted Transfer**"): (i) Tenant is not then in Default hereunder; (ii) Tenant gives Landlord written notice prior to such Permitted Transfer; and (iii) the successor entity resulting from any merger or consolidation of Tenant or the sale of all or substantially all of the assets of Tenant, has a net worth at the time of the Permitted Transfer that is at least equal to the net worth of Tenant immediately before the Permitted Transfer. "**Affiliate**" shall mean an entity controlled by, controlling or under common control with Tenant.

ARTICLE 10. INSURANCE AND INDEMNITY

10.1. TENANT'S INSURANCE. Tenant, at its sole cost and expense, shall provide and maintain in effect the insurance described in **Exhibit D**. Evidence of that insurance must be delivered to Landlord prior to the Commencement Date.

10.2. TENANT'S INDEMNITY. To the fullest extent permitted by law, but subject to Section 10.4 below, Tenant shall defend, indemnify and hold harmless Landlord and Landlord's agents, employees, lenders, and affiliates, from and against any and all negligence, claims, liabilities, damages, costs or expenses arising either before or after the Commencement Date which arise from or are caused by Tenant's use or occupancy of the Premises, the Building or the Common Areas of the Project, or from the conduct of Tenant's business, or from any activity, work, or thing done, permitted or suffered by Tenant or Tenant's agents, employees, subtenants, vendors, contractors, invitees or licensees in or about the Premises, the Building or the Common Areas of the Project, or from any Default in the performance of any obligation on Tenant's part to be performed under this Lease, or from any act, omission or negligence on the part of Tenant or Tenant's agents, employees, subtenants, vendors, contractors, invitees or licensees. Landlord may, at its option, require Tenant to assume Landlord's defense in any action covered by this Section 10.2 through counsel reasonably satisfactory to Landlord. Notwithstanding the foregoing, Tenant shall not be obligated to indemnify Landlord against any liability or expense to the extent it is ultimately determined that the same was caused by the sole negligence or willful misconduct of Landlord, its agents, contractors or employees.

10.3. LANDLORD'S NONLIABILITY. Landlord shall not be liable to Tenant, its employees, agents and invitees, and Tenant hereby waives all claims against Landlord, its employees and agents for loss of or damage to any property, or any injury to any person, resulting from any condition including, but not limited to, acts or omissions (criminal or otherwise) of third parties and/or other tenants of the Project, or their agents, employees or invitees, fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak or flow from or into any part of the Premises or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, electrical works or other fixtures in the Building, whether the damage or injury results from conditions arising in the Premises or in other portions of the Building, regardless of the negligence of Landlord, its agents or any and all affiliates of Landlord in connection with the foregoing. Notwithstanding anything to the contrary contained in this Lease, in no event shall Landlord be liable for Tenant's loss or interruption of business or income (including without limitation, Tenant's consequential damages, lost profits or opportunity costs), or for interference with light or other similar intangible interests.

10.4. WAIVER OF SUBROGATION. Landlord and Tenant each hereby waives all rights of recovery against the other on account of loss and damage occasioned to the property of such waiving party to the extent that the waiving party is entitled to proceeds for such loss and damage under any property insurance policies carried or otherwise required to be carried by this Lease.

ARTICLE 11. DAMAGE OR DESTRUCTION

11.1. RESTORATION.

(a) If the Building of which the Premises are a part is damaged as the result of an event of casualty, then subject to the provisions below, Landlord shall repair that damage as soon as reasonably possible unless Landlord reasonably determines that: (i) the Premises have been materially damaged and there is less than 1 year of the Term remaining on the date of the casualty; (ii) any Mortgagee (defined in Section 13.1) requires that the insurance proceeds be applied to the payment of the mortgage debt; or (iii) proceeds necessary to pay the full cost of the repair are not available from Landlord's insurance, including without limitation earthquake insurance. Should Landlord elect not to repair the damage for one of the preceding reasons, Landlord shall so notify Tenant in the "Casualty Notice" (as defined below), and this Lease shall terminate as of the date of delivery of that notice.

(b) As soon as reasonably practicable following the casualty event but not later than 60 days thereafter, Landlord shall notify Tenant in writing ("**Casualty Notice**") of Landlord's election, if applicable, to terminate this Lease. If this Lease is not so terminated, the Casualty Notice shall set forth the anticipated period for repairing the casualty damage. If the anticipated repair period exceeds 270 days and if the damage is so extensive as to reasonably prevent Tenant's substantial use and enjoyment of the Premises, then either party may elect to terminate this Lease by written notice to the other within 10 days following delivery of the Casualty Notice.

(c) In the event that neither Landlord nor Tenant terminates this Lease pursuant to Section 11.1(b), Landlord shall repair all material damage to the Premises or the Building as soon as reasonably possible and this Lease shall continue in effect for the remainder of the Term. Upon notice from Landlord, Tenant shall assign or endorse over to Landlord (or to any party designated by Landlord) all property insurance proceeds payable to Tenant under Tenant's insurance with respect to any Alterations. Within 15 days of demand, Tenant shall also pay Landlord for any additional excess costs that are determined during the performance of the repairs to such Alterations.

(d) From and after the casualty event, the rental to be paid under this Lease shall be abated in the same proportion that the Floor Area of the Premises that is rendered unusable by the damage from time to time bears to the total Floor Area of the Premises.

(e) Notwithstanding the provisions of subsections (a), (b) and (c) of this Section 11.1, but subject to Section 10.4, the cost of any repairs shall be borne by Tenant, and Tenant shall not be entitled to rental abatement or termination rights, if the damage is due to the fault or neglect of Tenant or its employees, subtenants, contractors, invitees or representatives.

11.2. LEASE GOVERNS. Tenant agrees that the provisions of this Lease, including without limitation Section 11.1, shall govern any damage or destruction and shall accordingly supersede any contrary statute or rule of law.

ARTICLE 12. EMINENT DOMAIN

Either party may terminate this Lease if any material part of the Premises is taken or condemned for any public or quasi-public use under Law, by eminent domain or private purchase in lieu thereof (a "**Taking**"). Landlord shall also have the right to terminate this Lease if there is a Taking of any portion of the Building or Project which would have a material adverse effect on Landlord's ability to profitably operate the remainder of the Building. The termination shall be effective as of the effective date of any order granting possession to, or vesting legal title in, the condemning authority. All compensation awarded for a Taking shall be the property of Landlord. Tenant agrees that the provisions of this Lease shall govern any Taking and shall accordingly supersede any contrary statute or rule of law.

ARTICLE 13. SUBORDINATION; ESTOPPEL CERTIFICATE

13.1. SUBORDINATION. Tenant accepts this Lease subject and subordinate to any mortgage(s), deed(s) of trust, ground lease(s) or other lien(s) now or subsequently arising upon the Premises, the Building or the Project, and to renewals, modifications, refinancings and extensions thereof (collectively referred to as a "**Mortgage**"). The party having the benefit of a Mortgage shall be referred to as a "**Mortgagee**." This clause shall be self-operative, but upon request from a Mortgagee, Tenant shall execute a commercially reasonable subordination and attornment agreement in favor of the Mortgagee, provided such agreement provides a non-disturbance covenant benefitting Tenant. Alternatively, a Mortgagee shall have the right at any time to subordinate its Mortgage to this Lease. Upon request, Tenant, without charge, shall attorn to any successor to Landlord's interest in this Lease in the event of a foreclosure of any mortgage. Tenant agrees that any purchaser at a foreclosure sale or lender taking title under a deed in lieu of foreclosure shall not be responsible for any act or omission of a prior landlord, shall not be subject to any offsets or defenses Tenant may have against a prior landlord, and shall not be liable for the return of the Security Deposit not actually recovered by such purchaser nor bound by any rent paid in advance of the calendar month in which the transfer of title occurred; provided that the foregoing shall not release the applicable prior landlord from any liability for those obligations. Tenant acknowledges that Landlord's Mortgagees and their successors-in-interest are intended third party beneficiaries of this Section 13.1.

13.2. ESTOPPEL CERTIFICATE. Tenant shall, within 10 days after receipt of a written request from Landlord, execute and deliver a commercially reasonable estoppel certificate in favor of those parties as are reasonably requested by Landlord (including a Mortgagee or a prospective purchaser of the Building or the Project).

ARTICLE 14. DEFAULTS AND REMEDIES

14.1. TENANT'S DEFAULTS. In addition to any other event of default set forth in this Lease, the occurrence of any one or more of the following events shall constitute a "**Default**" by Tenant:

(a) The failure by Tenant to make any payment of Rent required to be made by Tenant, as and when due, where the failure continues for a period of 3 days after written notice from Landlord to Tenant. The term "**Rent**" as used in this Lease shall be deemed to mean the Basic Rent and all other sums, including but not limited to parking charges, required to be paid by Tenant to Landlord pursuant to the terms of this Lease.

(b) Except where a specific time period is otherwise set forth for Tenant's performance in this Lease (in which event the failure to perform by Tenant within such time period shall be a Default), the failure or inability by Tenant to observe or perform any of the covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in any other subsection of this Section 14.1, where the failure continues for a period of 30 days after written notice from Landlord to Tenant.

The notice periods provided herein are in lieu of, and not in addition to, any notice periods provided by law, and Landlord shall not be required to give any additional notice under California Code of Civil Procedure Section 1161, or any successor statute, in order to be entitled to commence an unlawful detainer proceeding.

14.2. LANDLORD'S REMEDIES.

(a) Upon the occurrence of any Default by Tenant, then in addition to any other remedies available to Landlord, Landlord may exercise the following remedies:

(i) Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. Such termination shall not affect any accrued obligations of Tenant under this Lease. Upon termination, Landlord shall have the right to reenter the Premises and remove all persons and property. Landlord shall also be entitled to recover from Tenant:

(1) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(2) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such loss that Tenant proves could have been reasonably avoided;

(3) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such loss that Tenant proves could be reasonably avoided;

(4) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result from Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, commissions and other expenses of reletting, including necessary repair, renovation, improvement and alteration of the Premises for a new tenant, reasonable attorneys' fees, and any other reasonable costs; and

(5) At Landlord's election, all other amounts in addition to or in lieu of the foregoing as may be permitted by law. Any sum, other than Basic Rent, shall be computed on the basis of the average monthly amount accruing during the 24 month period immediately prior to Default, except that if it becomes necessary to compute such rental before the 24 month period has occurred, then the computation shall be on the basis of the average monthly amount during the shorter period. As used in subparagraphs (1) and (2) above, the "worth at the time of award" shall be computed by allowing interest at the rate of 10% per annum. As used in subparagraph (3) above, the "worth at the time of award" shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

(ii) Employ the remedy described in California Civil Code § 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations).

(b) The various rights and remedies reserved to Landlord in this Lease or otherwise shall be cumulative and, except as otherwise provided by California law, Landlord may pursue any or all of its rights and remedies at the same time. No delay or omission of Landlord to exercise any right or remedy shall be construed as a waiver of the right or remedy or of any breach or Default by Tenant. The acceptance by Landlord of rent shall not be a (i) waiver of any preceding breach or Default by Tenant of any provision of this Lease, other than the failure of Tenant to pay the particular rent accepted, regardless of Landlord's knowledge of the preceding breach or Default at the time of acceptance of rent, or (ii) a waiver of Landlord's right to exercise any remedy available to Landlord by virtue of the breach or Default. No payment by Tenant or receipt by Landlord of a lesser amount than the rent required by this Lease shall be deemed to be other than a partial payment on account of the earliest due stipulated rent, nor shall any endorsement or statement on any check or letter be deemed an accord and satisfaction and Landlord shall accept the check or payment without prejudice to Landlord's right to recover the balance of the rent or pursue any other remedy available to it. Tenant hereby waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Section 1174 or 1179, or under any successor statute, in the event this Lease is terminated by reason of any Default by Tenant. No act or thing done by Landlord or Landlord's agents during the Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by Landlord.

14.3. LATE PAYMENTS. Any Rent due under this Lease that is not paid to Landlord within 5 days of the date when due shall bear interest at the maximum rate permitted by law from the date due until fully paid and if any Rent due from Tenant shall not be received by Landlord or Landlord's designee within 5 days after the date due, then Tenant shall pay to Landlord, in addition to the interest, a late charge for each delinquent payment equal to the greater of (i) 5% of that delinquent payment or (ii) \$100.00.

14.4. DEFAULT BY LANDLORD. Landlord shall not be deemed to be in default in the performance of any obligation under this Lease unless and until it has failed to perform the obligation within 30 days after written notice by Tenant to Landlord specifying in reasonable detail the nature and extent of the failure; provided, however, that if the nature of Landlord's obligation is such that more than 30 days are required for its performance, then Landlord shall not be deemed to be in default if it commences performance within the 30 day period and thereafter diligently pursues the cure to completion.

14.5. EXPENSES AND LEGAL FEES. Should either Landlord or Tenant bring any action in connection with this Lease, the prevailing party shall be entitled to recover as a part of the action its reasonable attorneys' fees, and all other reasonable costs. The prevailing party for the purpose of this paragraph shall be determined by the trier of the facts.

14.6. WAIVER OF JURY TRIAL/JUDICIAL REFERENCE .

(a) **LANDLORD AND TENANT EACH ACKNOWLEDGES THAT IT IS AWARE OF AND HAS HAD THE ADVICE OF COUNSEL OF ITS CHOICE WITH RESPECT TO ITS RIGHT TO TRIAL BY JURY, AND EACH PARTY DOES HEREBY EXPRESSLY AND KNOWINGLY WAIVE AND RELEASE ALL SUCH RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY HERETO AGAINST THE OTHER (AND/OR AGAINST ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBSIDIARY OR AFFILIATED ENTITIES) ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.**

(b) In the event that the jury waiver provisions of Section 14.6(a) are not enforceable under California law, then, unless otherwise agreed to by the parties, the provisions of this Section 14.6(b) shall apply. Landlord and Tenant agree that any disputes arising in connection with this Lease (including but not limited to a determination of any and all of the issues in such dispute, whether of fact or of law) shall be resolved (and a decision shall be rendered) by way of a general reference as provided for in Part 2, Title 8, Chapter 6 (§§ 638 et. seq.) of the California Code of Civil Procedure, or any successor California statute governing resolution of disputes by a court appointed referee. Nothing within this Section 14.6 shall apply to an unlawful detainer action.

14.7. SATISFACTION OF JUDGMENT. The obligations of Landlord do not constitute the personal obligations of the individual partners, trustees, directors, officers, members or shareholders of Landlord or its constituent partners or members. Should Tenant recover a money judgment against Landlord, such judgment shall be satisfied only from the interest of Landlord in the Project and out of the rent or other income from such property receivable by Landlord, and no action for any deficiency may be sought or obtained by Tenant.

ARTICLE 15. END OF TERM

15.1. HOLDING OVER. If Tenant holds over for any period after the Expiration Date (or earlier termination of the Term), such tenancy shall constitute a tenancy at sufferance only and possession shall be subject to all of the terms of this Lease, except that the monthly rental shall be 200% of the total monthly rental for the month immediately preceding the date of termination. The acceptance by Landlord of monthly hold-over rental in a lesser amount shall not constitute a waiver of Landlord's right to recover the full amount due unless otherwise agreed in writing by Landlord. If Tenant fails to surrender the Premises upon the expiration of this Lease despite demand to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation, any claims made by any succeeding tenant relating to such failure to surrender. The foregoing provisions of this Section 15.1 are in addition to and do not affect Landlord's right of re-entry or any other rights of Landlord under this Lease or at law.

15.2. SURRENDER OF PREMISES; REMOVAL OF PROPERTY. Upon the Expiration Date or upon any earlier termination of this Lease, Tenant shall quit and surrender possession of the Premises to Landlord in as good order, condition and repair as when received or as hereafter may be improved by Landlord or Tenant, reasonable wear and tear and repairs which are Landlord's obligation excepted, and shall remove or fund to Landlord the cost of removing all wallpapering, voice and/or data transmission cabling installed by or for Tenant and Required Removables, together with all personal property and debris, and shall perform all work required under Section 7.3 of this Lease. If Tenant shall fail to comply with the provisions of this Section 15.2, Landlord may effect the removal and/or make any repairs, and the cost to Landlord shall be additional rent payable by Tenant upon demand.

ARTICLE 16. PAYMENTS AND NOTICES

All sums payable by Tenant to Landlord shall be paid, without deduction or offset, in lawful money of the United States to Landlord at its address set forth in Item 12 of the Basic Lease Provisions, or at any other place as Landlord may designate in writing. Unless this Lease expressly provides otherwise, all payments shall be due and payable within 5 days after demand. All payments requiring proration shall be prorated on the basis of the number of days in the pertinent calendar month or year, as applicable. Any notice, election, demand, consent or approval to be given or other document to be delivered by either party to the other may be delivered to the other party, at the address set forth in Item 12 of the Basic Lease Provisions, by personal service or by any courier or "overnight" express mailing service. Either party may, by written notice to the other, served in the manner provided in this Article, designate a different address. The refusal to accept delivery of a notice, or the inability to deliver the notice (whether due to a change of address for which notice was not duly given or other good reason), shall be deemed delivery and receipt of the notice as of the date of attempted delivery.

ARTICLE 17. RULES AND REGULATIONS

Tenant agrees to comply with the Rules and Regulations attached as **Exhibit E**, and any reasonable and nondiscriminatory amendments, modifications and/or additions as may be adopted by Landlord from time to time.

ARTICLE 18. BROKER'S COMMISSION

The parties recognize as the broker(s) who negotiated this Lease the firm(s) whose name(s) is (are) stated in Item 10 of the Basic Lease Provisions, and agree that Landlord shall be responsible for the payment of brokerage commissions to those broker(s) unless otherwise provided in this Lease. Tenant agrees to indemnify and hold Landlord harmless from any cost, expense or liability (including reasonable attorneys' fees) for any compensation, commissions or charges claimed by any other real estate broker or agent employed or claiming to represent or to have been employed by Tenant in connection with the negotiation of this Lease.

ARTICLE 19. TRANSFER OF LANDLORD'S INTEREST

Landlord shall have the right to transfer and assign, in whole or in part, all of its ownership interest, rights and obligations in the Building, Project or Lease, including the Security Deposit, and upon transfer Landlord shall be released from any further obligations hereunder, and Tenant agrees to look solely to the successor in interest of Landlord for the performance of such obligations and the return of any Security Deposit.

ARTICLE 20. INTERPRETATION

20.1. NUMBER. Whenever the context of this Lease requires, the words "Landlord" and "Tenant" shall include the plural as well as the singular.

20.2. JOINT AND SEVERAL LIABILITY. If more than one person or entity is named as Tenant, the obligations imposed upon each shall be joint and several and the act of or notice from, or notice or refund to, or the signature of, any one or more of them shall be binding on all of them with respect to the tenancy of this Lease, including, but not limited to, any renewal, extension, termination or modification of this Lease.

20.3. SUCCESSORS. The expiration of the Term, whether by lapse of time, termination or otherwise, shall not relieve either party of any obligations which accrued prior to or which may continue to accrue after the expiration or termination of this Lease.

20.4. TIME OF ESSENCE. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

20.5. CONTROLLING LAW/VENUE. This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

20.6. SEVERABILITY. If any term or provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by either party or the deletion of which is consented to by the party adversely affected, shall be held invalid or unenforceable to any extent, the remainder of this Lease shall not be affected and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

20.7. WAIVER. One or more waivers by Landlord or Tenant of any breach of any term, covenant or condition contained in this Lease shall not be a waiver of any subsequent breach of the same or any other term, covenant or condition. Consent to any act by one of the parties shall not be deemed to render unnecessary the obtaining of that party's consent to any subsequent act. No breach of this Lease shall be deemed to have been waived unless the waiver is in a writing signed by the waiving party.

20.8. INABILITY TO PERFORM. In the event that either party shall be delayed or hindered in or prevented from the performance of any work or in performing any act required under this Lease by reason of any cause beyond the reasonable control of that party, then the performance of the work or the doing of the act shall be excused for the period of the delay and the time for performance shall be extended for a period equivalent to the period of the delay. The provisions of this Section 20.8 shall not operate to excuse Tenant from the prompt payment of Rent.

20.9. ENTIRE AGREEMENT. This Lease constitutes the entire agreement between the parties and supersedes all prior agreements and understandings related to the Premises. This Lease may be modified only by a written agreement signed by Landlord and Tenant.

20.10. QUIET ENJOYMENT. Upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, and subject to the other provisions of this Lease, Tenant shall have the right of quiet enjoyment and use of the Premises for the Term without hindrance or interruption by Landlord or any other person claiming by or through Landlord.

20.11. SURVIVAL. All covenants of Landlord or Tenant which reasonably would be intended to survive the expiration or sooner termination of this Lease, including without limitation any warranty or indemnity hereunder, shall so survive and continue to be binding upon and inure to the benefit of the respective parties and their successors and assigns.

ARTICLE 21. EXECUTION

21.1. COUNTERPARTS; DIGITAL SIGNATURES. This Lease may be executed in one or more counterparts, each of which shall constitute an original and all of which shall be one and the same agreement. The parties agree to accept a digital image (including but not limited to an image in the form of a PDF, JPEG, GIF file, or other e-signature) of this Lease, if applicable, reflecting the execution of one or both of the parties, as a true and correct original.

21.2. CORPORATE AND PARTNERSHIP AUTHORITY. Tenant represents and warrants to Landlord, and agrees, that each individual executing this Lease on behalf of Tenant is authorized to do so on behalf of Tenant.

21.3. EXECUTION OF LEASE; NO OPTION OR OFFER. The submission of this Lease to Tenant shall be for examination purposes only, and shall not constitute an offer to or option for Tenant to lease the Premises unless and until Landlord has executed and delivered this Lease to Tenant.

21.4. BROKER DISCLOSURE. By the execution of this Lease, each of Landlord and Tenant hereby acknowledge and confirm (a) receipt of a copy of a Disclosure Regarding Real Estate Agency Relationship conforming to the requirements of California Civil Code 2079.16, and (b) the agency relationships specified in Item 10 of the Basic Lease Provisions, which acknowledgement and confirmation is expressly made for the benefit of Tenant's Broker identified in Item 10 of the Basic Lease Provisions. If there is no Tenant's Broker so identified in Item 10 of the Basic Lease Provisions, then such acknowledgement and confirmation is expressly made for the benefit of Landlord's Broker. By the execution of this Lease, Landlord and Tenant are executing the confirmation of the agency relationships set forth in Item 10 of the Basic Lease Provisions.

ARTICLE 22. MISCELLANEOUS

22.1. MORTGAGEE PROTECTION. No act or failure to act on the part of Landlord which would otherwise entitle Tenant to be relieved of its obligations hereunder or to terminate this Lease shall result in such a release or termination unless (a) Tenant has given notice by registered or certified mail to any Mortgagee of a Mortgage covering the Building whose address has been furnished to Tenant and (b) such Mortgagee is afforded a reasonable opportunity to cure the default by Landlord. Tenant shall comply with any written directions by any Mortgagee to pay Rent due hereunder directly to such Mortgagee without determining whether a default exists under such Mortgagee's Mortgage.

22.2. SDN LIST. Tenant hereby represents and warrants that neither Tenant nor any officer, director, employee, partner, member or other principal of Tenant (collectively, "**Tenant Parties**") is listed as a Specially Designated National and Blocked Person ("**SDN**") on the list of such persons and entities issued by the U.S. Treasury Office of Foreign Assets Control (OFAC). In the event Tenant or any Tenant Party is or becomes listed as an SDN, Tenant shall be deemed in breach of this Lease and Landlord shall have the right to terminate this Lease immediately upon written notice to Tenant.

LANDLORD:

JAMBOREE CENTER 4 LLC,
a Delaware limited liability company

By: /s/ Steven M. Case
Steven M. Case
Executive Vice President
Office Properties

By: /s/ Christopher J. Popma
Christopher J. Popma
Regional Vice President, Operations
Office Properties

TENANT:

ACACIA RESEARCH CORPORATION,
a Delaware corporation

By: /s/ Marc W. Booth
Printed Name: Marc W. Booth
Title: Vice President & Chief IP Officer

By: /s/ Jennifer Graff
Printed Name: Jennifer Graff
Title: Corporate Secretary

4 Park Plaza
Suite 550

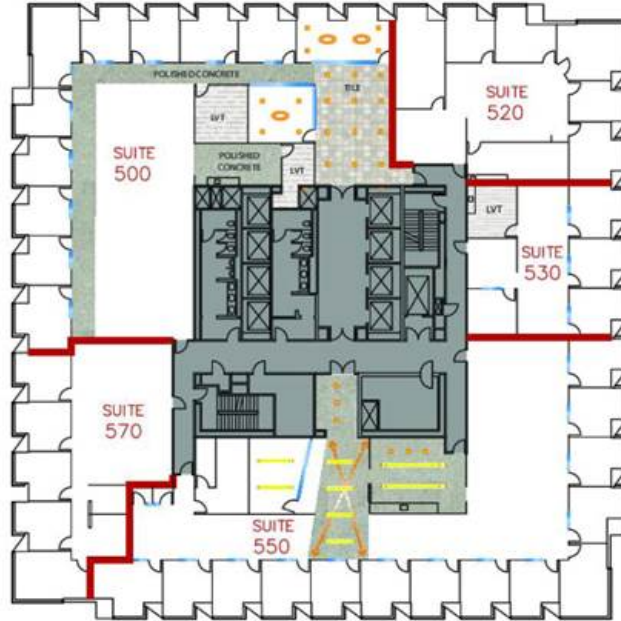


EXHIBIT A

EXHIBIT B

**Operating Expenses and Taxes
(Base Year)**

(a) Commencing 12 months following the Commencement Date, Tenant shall pay Landlord, as additional rent, for Tenant's Share of the amount, if any, by which "**Project Costs**" (defined below) for each Expense Recovery Period during the Term exceed Project Costs for the Project Cost Base and the amount, if any, by which "**Property Taxes**" (defined below) for each Expense Recovery Period during the Term exceed Property Taxes for the Property Tax Base. Property Taxes and Project Costs are mutually exclusive and may be billed separately or in combination as determined by Landlord. "**Tenant's Share**" shall mean that portion of any Operating Expenses determined by multiplying the cost of such item by a fraction, the numerator of which is the Floor Area and the denominator of which is the total rentable square footage, as determined from time to time by Landlord, of (i) the Floor Area of the Building as defined in Item 8 of the Basic Lease Provisions, for expenses determined by Landlord to benefit or relate substantially to the Building rather than the entire Project, or (ii) all or some of the buildings in the Project, for expenses determined by Landlord to benefit or relate substantially to all or some of the buildings in the Project rather than any specific building. Tenant acknowledges Landlord's rights to make changes or additions to the Building and/or Project from time to time, in which event the total rentable square footage within the Building and/or Project may be adjusted. For convenience of reference, Property Taxes and Project Costs may sometimes be collectively referred to as "**Operating Expenses.**"

(b) Commencing prior to the start of the first full "**Expense Recovery Period**" of the Lease (as defined in Item 7 of the Basic Lease Provisions) following the Base Year, and prior to the start of each full or partial Expense Recovery Period thereafter, Landlord shall give Tenant a written estimate of the amount of Tenant's Share of Project Costs and Property Taxes for the Expense Recovery Period or portion thereof. Commencing 12 months following the Commencement Date, Tenant shall pay the estimated amounts to Landlord in equal monthly installments, in advance, with Basic Rent. Landlord may from time to time change the Expense Recovery Period to reflect a calendar year or a new fiscal year of Landlord, as applicable, in which event Tenant's share of Operating Expenses shall be equitably prorated for any partial year. From time to time during an Expense Recovery Period, Landlord may revise the estimate based on increases in any of the Operating Expenses.

(c) Within 180 days after the end of each Expense Recovery Period, Landlord shall furnish to Tenant a statement setting forth the actual or prorated Property Taxes and Project Costs attributable to that period, and the parties shall within 30 days thereafter make any payment or allowance necessary to adjust Tenant's estimated payments, if any, to Tenant's actual Tenant's Share as shown by the annual statement. If actual Property Taxes or Project Costs allocable to Tenant during any Expense Recovery Period are less than the Property Tax Base or the Project Cost Base, respectively, Landlord shall not be required to pay that differential to Tenant, although Landlord shall refund any applicable estimated payments collected from Tenant. Should Tenant fail to object in writing to Landlord's determination of actual Operating Expenses within 60 days following delivery of Landlord's expense statement, Landlord's determination of actual Operating Expenses for the applicable Expense Recovery Period shall be conclusive and binding on Tenant.

(d) Even though the Lease has terminated and the Tenant has vacated the Premises, when the final determination is made of Tenant's share of Property Taxes and Project Costs for the Expense Recovery Period in which the Lease terminates, Tenant shall upon notice pay the entire increase due over the estimated expenses paid; conversely, any overpayment made in the event expenses decrease shall be rebated by Landlord to Tenant.

(e) The term "**Project Costs**" shall include all charges and expenses pertaining to the operation, management, maintenance and repair of the Building and the Project, together with all appurtenant Common Areas (as defined in Section 6.2), and shall include the following charges by way of illustration but not limitation: water and sewer charges; insurance premiums and deductibles and/or reasonable premium equivalents and deductible equivalents should Landlord elect to self-insure any risk that Landlord is authorized to insure hereunder; license, permit, and inspection fees; heat; light; power; janitorial services; the cost of equipping, staffing and operating an on-site and/or off-site management office for the Building and Project; all labor and labor-related costs for personnel applicable to the Building and Project, including both Landlord's personnel and outside personnel; a commercially reasonable Landlord overhead/management fee; reasonable fees for consulting services; access control/security costs, inclusive of the reasonable cost of improvements made to enhance access control systems and procedures; repairs; air conditioning; supplies; materials; equipment; tools; tenant services; programs instituted to comply with transportation management requirements; any expense incurred pursuant to Sections 6.1, 6.2, 7.2, and **Exhibits C and F** below; costs incurred (capital or otherwise) on a regular recurring basis every 3 or more years for normal maintenance projects (e.g., parking lot slurry coat or replacement of lobby, corridor and elevator cab carpets and coverings); and the amortized cost of capital improvements (as distinguished from replacement parts or components installed in the ordinary course of business) which are intended to reduce other operating costs or increases thereof, or upgrade Building and/or Project security, or which are required to bring the Building and/or Project into compliance with applicable laws and building codes. Landlord shall amortize the cost of capital improvements on a straight-line basis over the lesser of the Payback Period (as defined below) or the useful life of the capital improvement as reasonably determined by Landlord. Any amortized Project Costs item may include, at Landlord's option, an actual or imputed interest rate that Landlord would reasonably be required to pay to finance the cost of the item, applied on the unamortized balance. "**Payback Period**" shall mean the reasonably estimated period of time that it takes for the cost savings, if any, resulting from a capital improvement item to equal the total cost of the capital improvement. It is understood that Project Costs shall include competitive charges for direct services provided by any subsidiary or division of Landlord. If any Project Costs are applicable to one or more buildings or properties in addition to the Building, then that cost shall be equitably prorated and apportioned among the Building and such other buildings or properties. The term "**Property Taxes**" as used herein shall include the following: (i) all real estate taxes or personal property taxes, as such property taxes may be increased from time to time due to a reassessment or otherwise; and (ii) other taxes, charges and assessments which are levied with respect to this Lease or to the Building and/or the Project, and any improvements, fixtures and equipment and other property of Landlord located in the Building and/or the Project, except that general net income and franchise taxes imposed against Landlord shall be excluded; and (iii) any tax, surcharge or assessment which shall be levied in addition to or in lieu of real estate or personal property taxes; and (iv) costs and expenses incurred in contesting the amount or validity of any Property Tax by appropriate proceedings. A copy of Landlord's unaudited statement of expenses shall be made available to Tenant upon request. The Project Costs, inclusive of those for the Base Year, shall be extrapolated by Landlord to reflect at least 95% occupancy of the rentable area of the Building.

EXHIBIT C

UTILITIES AND SERVICES

The following standards for utilities and services shall be in effect at the Building. Landlord reserves the right to adopt nondiscriminatory modifications and additions to these standards. In the case of any conflict between these standards and the Lease, the Lease shall be controlling. Subject to all of the provisions of the Lease, the following shall apply:

1. Landlord shall make available to the Premises during the hours of 8:00 a.m. to 6:00 p.m., Monday through Friday, and upon request, from 8:00 a.m. to 1:00 p.m. on Saturday ("**Building Hours**"), generally recognized national holidays excepted, reasonable HVAC services. Subject to the provisions set forth below, Landlord shall also furnish the Building with elevator service (if applicable), reasonable amounts of electric current for normal lighting by Landlord's standard overhead fluorescent and incandescent fixtures and for the operation of office equipment consistent in type and quantity with that utilized by typical office tenants of the Building and Project, and water for lavatory purposes. Tenant will not, without the prior written consent of Landlord, connect any apparatus, machine or device with water pipes or electric current (except through existing electrical outlets in the Premises) for the purpose of using electric current or water.

2. Upon written request from Tenant delivered to Landlord at least 24 hours prior to the period for which service is requested, but during normal business hours, Landlord will provide any of the foregoing building services to Tenant at such times when such services are not otherwise available. Tenant agrees to pay Landlord for those after-hour services at rates that Landlord may establish from time to time. If Tenant requires electric current in excess of that which Landlord is obligated to furnish under this **Exhibit C**, Tenant shall first obtain the consent of Landlord, and Landlord may cause an electric current meter to be installed in the Premises to measure the amount of electric current consumed. The cost of installation, maintenance and repair of the meter shall be paid for by Tenant, and Tenant shall reimburse Landlord promptly upon demand for all electric current consumed for any special power use as shown by the meter.

3. Landlord shall furnish water for drinking, personal hygiene and lavatory purposes only.

4. In the event that any utility service to the Premises is separately metered or billed to Tenant, Tenant shall pay all charges for that utility service to the Premises and the cost of furnishing the utility to tenant suites shall be excluded from the Operating Expenses as to which reimbursement from Tenant is required in the Lease.

5. Landlord shall provide janitorial services 5 days per week, equivalent to that furnished in comparable buildings, and window washing as reasonably required; provided, however, that Tenant shall pay for any additional or unusual janitorial services.

6. Tenant shall have access to the Building 24 hours per day, 7 days per week, 52 weeks per year; provided that Landlord may install access control systems as it deems advisable for the Building. Landlord may impose a reasonable charge for access control cards and/or keys issued to Tenant.

7. The costs of operating, maintaining and repairing any supplemental air conditioning unit serving only the Premises shall be borne solely by Tenant. Such installation shall be subject to Landlord's prior written approval, at Tenant's sole expense and shall include installation of a separate meter for the operation of the unit. Landlord may require Tenant to remove at Lease expiration any such unit installed by or for Tenant and to repair any resulting damage to the Premises or Building.

EXHIBIT D

TENANT'S INSURANCE

The following requirements for Tenant's insurance shall be in effect during the Term, and Tenant shall also cause any subtenant to comply with the requirements. Landlord reserves the right to adopt reasonable nondiscriminatory modifications and additions to these requirements.

1. Tenant shall maintain, at its sole cost and expense, during the entire Term: (i) commercial general liability insurance with respect to the Premises and the operations of Tenant in, on or about the Premises, on a policy form that is at least as broad as Insurance Service Office (ISO) CGL 00 01 (if alcoholic beverages are sold on the Premises, liquor liability shall be explicitly covered), which policy(ies) shall be written on an "occurrence" basis and for not less than \$2,000,000 combined single limit per occurrence for bodily injury, death, and property damage liability; (ii) workers' compensation insurance coverage as required by law, together with employers' liability insurance coverage of at least \$1,000,000 each accident and each disease; (iii) with respect to Alterations constructed by Tenant under this Lease, builder's risk insurance, in an amount equal to the replacement cost of the work; and (iv) insurance against fire, vandalism, malicious mischief and such other additional perils as may be included in a standard "special form" policy, insuring all Alterations, trade fixtures, furnishings, equipment and items of personal property in the Premises, in an amount equal to not less than 90% of their replacement cost (with replacement cost endorsement), which policy shall also include business interruption coverage in an amount sufficient to cover 1 year of loss. In no event shall the limits of any policy be considered as limiting the liability of Tenant under this Lease.

2. All policies of insurance required to be carried by Tenant pursuant to this **Exhibit D** shall be written by insurance companies authorized to do business in the State of California and with a general policyholder rating of not less than "A-" and financial rating of not less than "VIII" in the most current Best's Insurance Report. The deductible or other retained limit under any policy carried by Tenant shall be commercially reasonable, and Tenant shall be responsible for payment of such deductible or retained limit with waiver of subrogation in favor of Landlord. Any insurance required of Tenant may be furnished by Tenant under any blanket policy carried by it or under a separate policy. A certificate of insurance, certifying that the policy has been issued, provides the coverage required by this Exhibit and contains the required provisions, together with endorsements acceptable to Landlord evidencing the waiver of subrogation and additional insured provisions required below, shall be delivered to Landlord prior to the date Tenant is given the right of possession of the Premises. Proper evidence of the renewal of any insurance coverage shall also be delivered to Landlord not less than thirty (30) days prior to the expiration of the coverage. In the event of a loss covered by any policy under which Landlord is an additional insured, Landlord shall be entitled to review a copy of such policy.

3. Tenant's commercial general liability insurance shall contain a provision that the policy shall be primary to and noncontributory with any policies carried by Landlord, together with a provision including Landlord, The Irvine Company LLC, and any other parties in interest designated by Landlord as additional insureds. Tenant's policies described in Subsections 1 (ii), (iii) and (iv) above shall each contain a waiver by the insurer of any right to subrogation against Landlord, its agents, employees, contractors and representatives. Tenant also waives its right of recovery for any deductible or retained limit under same policies enumerated above. All of Tenant's policies shall contain a provision that the insurer will not cancel or change the coverage provided by the policy without first giving Landlord 30 days prior written notice. Tenant shall also name Landlord as an additional insured on any excess or umbrella liability insurance policy carried by Tenant.

NOTICE TO TENANT: IN ACCORDANCE WITH THE TERMS OF THIS LEASE, TENANT MUST PROVIDE EVIDENCE OF THE REQUIRED INSURANCE TO LANDLORD'S MANAGEMENT AGENT PRIOR TO BEING AFFORDED ACCESS TO THE PREMISES.

EXHIBIT E

RULES AND REGULATIONS

The following Rules and Regulations shall be in effect at the Building. Landlord reserves the right to adopt reasonable nondiscriminatory modifications and additions at any time. In the case of any conflict between these regulations and the Lease, the Lease shall be controlling.

1. The sidewalks, halls, passages, elevators, stairways, and other common areas shall not be obstructed by Tenant or used by it for storage, for depositing items, or for any purpose other than for ingress to and egress from the Premises. Should Tenant have access to any balcony or patio area, Tenant shall not place any furniture other personal property in such area without the prior written approval of Landlord.
2. Neither Tenant nor any employee or contractor of Tenant shall go upon the roof of the Building without the prior written consent of Landlord.
3. Tenant shall, at its expense, be required to utilize the third party contractor designated by Landlord for the Building to provide any telephone wiring services from the minimum point of entry of the telephone cable in the Building to the Premises.
4. No antenna or satellite dish shall be installed by Tenant without the prior written agreement of Landlord.
5. The sashes, sash doors, windows, glass lights, solar film and/or screen, and any lights or skylights that reflect or admit light into the halls or other places of the Building shall not be covered or obstructed. If Landlord, by a notice in writing to Tenant, shall object to any curtain, blind, tinting, shade or screen attached to, or hung in, or used in connection with, any window or door of the Premises, the use of that curtain, blind, tinting, shade or screen shall be immediately discontinued and removed by Tenant. Interior of the Premises visible from the exterior must be maintained in a visually professional manner and consistent with a first class office building. Tenant shall not place any unsightly items (as determined by Landlord in its reasonable discretion) along the exterior glass line of the Premises including, but not limited to, boxes, and electrical and data cords. No awnings shall be permitted on any part of the Premises.
6. The installation and location of any unusually heavy equipment in the Premises, including without limitation file storage units, safes and electronic data processing equipment, shall require the prior written approval of Landlord. The moving of large or heavy objects shall occur only between those hours as may be designated by, and only upon previous notice to, Landlord. No freight, furniture or bulky matter of any description shall be received into or moved out of the lobby of the Building or carried in any elevator other than the freight elevator (if available) designated by Landlord unless approved in writing by Landlord.
7. Any pipes or tubing used by Tenant to transmit water to an appliance or device in the Premises must be made of copper or stainless steel, and in no event shall plastic tubing be used for that purpose.
8. Tenant shall not place any lock(s) on any door in the Premises or Building without Landlord's prior written consent, which consent shall not be unreasonably withheld. Upon the termination of its tenancy, Tenant shall deliver to Landlord all the keys to offices, rooms and toilet rooms and all access cards which shall have been furnished to Tenant or which Tenant shall have had made.
9. Tenant shall not install equipment requiring electrical or air conditioning service in excess of that to be provided by Landlord under the Lease without prior written approval from Landlord.

10. Tenant shall not use space heaters within the Premises.

11. Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything in the Premises, which shall in any way increase the insurance on the Building, or on the property kept in the Building, or interfere with the rights of other tenants, or conflict with any government rule or regulation.

12. Tenant shall not use or keep any foul or noxious gas or substance in the Premises.

13. Tenant shall not permit the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business with other tenants.

14. Tenant shall not permit any pets or animals in or about the Building. Bona fide service animals are permitted provided such service animals are pre-approved by Landlord, remain under the direct control of the individual they serve at all times, and do not disturb or threaten others.

15. Neither Tenant nor its employees, agents, contractors, invitees or licensees shall bring any firearm, whether loaded or unloaded, into the Project at any time.

16. Smoking tobacco, including via personal vaporizers or other electronic cigarettes, anywhere within the Premises, Building or Project is strictly prohibited except that smoking tobacco may be permitted outside the Building and within the Project only in areas designated by Landlord. Smoking, vaping, distributing, growing or manufacturing marijuana or any marijuana derivative anywhere within the Premises, Building or Project is strictly prohibited.

17. Tenant shall not install an aquarium of any size in the Premises unless otherwise approved by Landlord.

18. Tenant shall not utilize any name selected by Landlord from time to time for the Building and/or the Project as any part of Tenant's corporate or trade name. Landlord shall have the right to change the name, number or designation of the Building or Project without liability to Tenant. Tenant shall not use any picture of the Building in its advertising, stationery or in any other manner.

19. Tenant shall, upon request by Landlord, supply Landlord with the names and telephone numbers of personnel designated by Tenant to be contacted on an after-hours basis should circumstances warrant.

20. Landlord may from time to time grant tenants individual and temporary variances from these Rules, provided that any variance does not have a material adverse effect on the use and enjoyment of the Premises by Tenant.

21. Fitness Center Rules. Tenant shall cause its employees (whether members or prospective members of the Fitness Center) to comply with the following Fitness Center rules and regulations (subject to change from time to time as Landlord may solely determine):

(a) Membership in the Fitness Center is open to the tenants of Landlord or its affiliates only. No guests will be permitted to use the Fitness Center without the prior written approval of Landlord or Landlord's representative.

(b) Fitness Center users are not allowed to be in the Fitness Center other than the hours designated by Landlord from time to time. Landlord shall have the right to alter the hours of use of the Fitness Center, at Landlord's sole discretion.

(c) All Fitness Center users must execute Landlord's Waiver of Liability prior to use of the Fitness Center and agree to all terms and conditions outlined therein.

(d) Individual membership and guest keycards to the Fitness Center shall not be shared and shall only be used by the individual to whom such keycard was issued. Failure to abide by this rule may result in immediate termination of such Fitness Center user's right to use the Fitness Center.

(e) All Fitness Center users and approved guests must have a pre-authorized keycard to enter the Fitness Center. A pre-authorized keycard shall not be issued to a prospective Fitness Center user until receipt by Landlord of Landlord's initial fee, if any, for use of the Fitness Center by such Fitness Center user(s).

(f) Use of the Fitness Center is a privilege and not a right. Failure to follow gym rules or to act inappropriately while using the facilities shall result in termination of Tenant's Fitness Center privileges.

EXHIBIT F

PARKING

The following parking regulations shall be in effect at the Building. In the case of any conflict between these regulations and the Lease, the Lease shall be controlling.

1. Landlord agrees to maintain, or cause to be maintained, an automobile parking area (" **Parking Area**") in reasonable proximity to the Building for the benefit and use of the visitors and patrons and, except as otherwise provided, employees of Tenant, and other tenants and occupants of the Building. Landlord shall have the right to determine the nature and extent of the automobile Parking Area, and of making such changes to the Parking Area from time to time which in its opinion are desirable. Landlord shall not be liable for any damage to motor vehicles of visitors or employees, for any loss of property from within those motor vehicles, or for any injury to Tenant, its visitors or employees, unless ultimately determined to be caused by the sole active negligence or willful misconduct of Landlord. Landlord shall also have the right to establish, and from time to time amend, and to enforce against all users of the Parking Area all reasonable rules and regulations (including the designation of areas for employee parking) as Landlord may deem necessary and advisable for the proper and efficient operation and maintenance of the Parking Area.

2. Landlord may, if it deems advisable in its sole discretion, charge for parking and may establish for the Parking Area a system or systems of permit parking for Tenant, its employees and its visitors. In no event shall Tenant or its employees park in reserved stalls leased to other tenants or in stalls within designated visitor parking zones, nor shall Tenant or its employees utilize more than the number of Parking Passes (defined below) allotted in this Lease to Tenant. Tenant shall, upon request of Landlord from time to time, furnish Landlord with a list of its employees' names and of Tenant's and its employees' vehicle license numbers. Parking access devices, if applicable, shall not be transferable. Landlord may impose a reasonable fee for access devices and a replacement charge for devices which are lost or stolen. Each access device shall be returned to Landlord promptly following the Expiration Date or sooner termination of this Lease.

3. Washing, waxing, cleaning or servicing of vehicles, or the parking of any vehicle on an overnight basis, in the Parking Area (other than emergency services) by any parker or his or her agents or employees is prohibited unless otherwise authorized by Landlord.

4. It is understood that the employees of Tenant and the other tenants of Landlord within the Building and Project shall not be permitted to park their automobiles in the portions of the Parking Area which may from time to time be designated for patrons of the Building and/or Project. Tenant may purchase from Landlord for the Term of this Lease, all or a portion of the total number of parking passes set forth in Item 11 of the Basic Lease Provisions (the "**Parking Passes**") for unreserved parking. During the initial 60 month Lease Term only, the monthly charge for the Parking Passes shall be \$55.00 per Parking Pass per month. Thereafter, the parking charges shall be at Landlord's scheduled parking rates from time to time. Should any monthly parking charge not be paid within 5 days following the date due, then a late charge shall be payable by Tenant equal to the greater of (i) 5% of the delinquent installment or (ii) \$100.00, which late charge shall be separate and in addition to any late charge that may be assessed pursuant to Section 14.3 of the Lease for other than delinquent monthly parking charges.

5. Landlord shall be entitled to pass on to Tenant its proportionate share of any charges or parking surcharge or transportation management costs levied by any governmental agency and Tenant shall cooperate in any voluntary or mandated transportation management programs.

6. Tenant shall not assign or sublet any of the Parking Passes, either voluntarily or by operation of law, without the prior written consent of Landlord, except in connection with an authorized assignment of this Lease or subletting of the Premises.

EXHIBIT G

ADDITIONAL PROVISIONS

1 . **FITNESS CENTER.** Subject to the provisions of this Section, so long as Tenant is not in Default under this Lease, and provided Tenant's employees execute Landlord's standard waiver of liability form and pay the applicable one time or monthly fee, if any, then Tenant's employees (the "**Fitness Center Users**") shall be entitled to use the fitness center and the shower facility located at the Project (collectively, the "**Fitness Center**"). No separate charges shall be assessed to Fitness Center Users for the use of the Fitness Center (with the exception of towel/laundry fees, if any) during the initial Term of this Lease, provided, however, that the costs of operating, maintaining and repairing the Fitness Center shall be included as part of Operating Expenses. The use of the Fitness Center shall be subject to the reasonable rules and regulations (including rules regarding hours of use) established from time to time by Landlord. Landlord and Tenant acknowledge that the use of the Fitness Center by the Fitness Center Users shall be at their own risk and that the terms and provisions of Section 10.2 of this Lease shall apply to Tenant and the Fitness Center User's use of the Fitness Center. Tenant acknowledges that the provisions of this Section shall not be deemed to be a representation by Landlord that Landlord shall continuously maintain the Fitness Center (or any other fitness facility) throughout the Term of this Lease, and Landlord shall have the right, at Landlord's sole discretion, to expand, contract, eliminate or otherwise modify the Fitness Center. No expansion, contraction, elimination or modification of the Fitness Center, and no termination of Tenant's or the Fitness Center Users' rights to the Fitness Center shall entitle Tenant to an abatement or reduction in Basic Rent constitute a constructive eviction, or result in an event of default by Landlord under this Lease. Landlord reserves the right to reasonably limit, restrain, or condition the use of the Fitness Center by tenants of the Building (including Tenant's Fitness Center Users) if Landlord reasonably determines that their use of the Fitness Center has a disproportionate and/or inequitable impact on the ability of other tenants to use the Fitness Center. Tenant hereby voluntarily releases, discharges, waives and relinquishes any and all actions or causes of action for personal injury or property damage occurring to Tenant or its employees or agents arising as a result of the use of the Fitness Center, or any activities incidental thereto, wherever or however the same may occur, and further agrees that Tenant will not prosecute any claim for personal injury or property damage against Landlord or any of its officers, agents, servants or employees for any said causes of action. It is the intention of Tenant with respect to the Fitness Center to exempt and relieve Landlord from liability for personal injury or property damage caused by negligence. Tenant's right to use the Fitness Center shall belong solely to Tenant and may not be transferred or assigned without Landlord's prior written consent, which may be withheld by Landlord in Landlord's sole discretion.

2 . **CONFERENCE CENTER.** Landlord currently provides a conference center (the "**Conference Center**") in the Project capable of accommodating groups of people for use by Project tenants (including Tenant) on a reserved basis. Tenant shall, subject to availability, have the use of the Conference Center subject to Landlord's procedures and charges, if any. The use of the Conference Center shall be subject to the reasonable rules and regulations (including rules regarding hours of use and priorities for the tenants of the particular building in which a Conference Center is located, set up and clean up charges, etc.) established from time to time by Landlord for the Conference Center. Landlord and Tenant acknowledge that the terms and provisions of Section 10.2 of this Lease shall apply to Tenant's use of the Conference Center. Further, Landlord shall have no liability whatsoever with respect to the existence, condition or availability of any Conference Center nor shall Landlord have any obligation whatsoever to enforce or make reservations thereof, and Tenant hereby expressly waives all claims against Landlord with respect to the same. No expansion, contraction, elimination, unavailability or modification of the Conference Center, and no termination of or interference with Tenant's rights to the Conference Center, shall entitle Tenant to an abatement or reduction in rent or constitute a constructive eviction or an event of default by Landlord under this Lease.

3 . **MOVING ALLOWANCE.** In consideration of the execution of this Lease by Tenant, Landlord shall reimburse Tenant the actual out-of-pocket expenses incurred by Tenant in connection with Tenant's move to the Premises, which expenses shall include furniture, fixtures and equipment, and telecommunications and cabling costs ("**Moving Allowance**"). Tenant agrees that all such expenses shall be supported by paid invoices, and the total thereof shall not to exceed \$65,000.00. The reimbursement shall be paid by Landlord within 30 days following receipt of those invoices, but in no event sooner than the Commencement Date of the Lease. Tenant agrees that any portion of the Moving Allowance not utilized by Tenant, as evidenced in third party invoices submitted to Landlord within 60 days of the Commencement Date, shall inure to the benefit of Landlord and Tenant shall not be entitled to any credit or payment for such savings.

SUBSIDIARIES OF THE REGISTRANT

EXHIBIT 21.1

SUBSIDIARIES OF THE REGISTRANT

The following is a listing of the significant subsidiaries of Acacia Research Corporation:

	Jurisdiction of <u>Incorporation</u>
Acacia Global Acquisition LLC and subsidiaries	Delaware
Acacia Research Group, LLC, formerly Acacia Patent Acquisition, LLC and subsidiaries	Delaware

Acacia Global Acquisition LLC and Acacia Research Group, LLC, wholly own multiple consolidated operating subsidiaries, that are included in Acacia Research Corporation's consolidated financial statements included elsewhere herein, each of which are separate and distinct legal entities, and all of which are in the patent acquisition, development, licensing and enforcement business. All of the operating subsidiaries wholly owned by Acacia Global Acquisition LLC and Acacia Research Group, LLC operate in the United States.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our reports dated March 16, 2020, with respect to the consolidated financial statements and internal control over financial reporting included in the Annual Report of Acacia Research Corporation on Form 10-K for the year ended December 31, 2019. We hereby consent to the incorporation by reference of said reports in the Registration Statements of Acacia Research Corporation on Forms S-8 (File No. 333-189135 and File No. 333-217878).

/s/ GRANT THORNTON LLP
Newport Beach, California
March 16, 2020

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

I, Clifford Press, certify that:

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

Date: March 16, 2020

/s/ Clifford Press
Clifford Press
Chief Executive Officer

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

I, Li Yu, certify that:

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

Date: March 16, 2020

/s/ Li Yu
Li Yu
Corporate Controller

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

In connection with the Annual Report of Acacia Research Corporation (the "Company") on Form 10-K for the fiscal year December 31, 2019, as filed with the Securities and Exchange Commission on March 16, 2020 (the "Report"), I, Clifford Press, Chief Executive Officer of the Company, hereby certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); 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: March 16, 2020

By: /s/ Clifford Press
Clifford Press
Chief Executive Officer

This certification accompanies the Report pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that section. This certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the Company specifically incorporates it by reference.

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

In connection with the Annual Report of Acacia Research Corporation (the "Company") on Form 10-K for the fiscal year December 31, 2019, as filed with the Securities and Exchange Commission on March 16, 2020 (the "Report"), I, Li Yu, Corporate Controller of the Company, hereby certify, pursuant to Rule 13a-14(b) or Rule 15d-14(b) of the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); 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: March 16, 2020

By: /s/ Li Yu
Li Yu
Corporate Controller

This certification accompanies the Report pursuant to Rule 13a-14(b) or Rule 15d-14(b) under the Securities Exchange Act of 1934 and 18 U.S.C. Section 1350 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to the liability of that section. This certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the Company specifically incorporates it by reference.