Use these links to rapidly review the document
TABLE OF CONTENTS
Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Table of Contents

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

# FORM 10-K

**(Mark One)**

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

**For the fiscal year ended June 27, 2009**

**or**

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

**Commission file number 001-33301**

# ACCURAY INCORPORATED
(Exact name of registrant as specified in its charter)

| **DELAWARE** | **20-8370041** |
|---|---|
| (State or Other Jurisdiction of Incorporation or organization) | (I.R.S. Employer Identification No.) |

**1310 Chesapeake Terrace**
**Sunnyvale, California 94089**
(Address of Principal Executive Offices) (Zip Code)

Registrants' telephone number, including area code: **(408)716-4600**

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

| **Title of Each Class** | **Name of Each Exchange on Which Registered** |
|---|---|
| Common Stock, $.001 par value per share | 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 such

filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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

| Large accelerated filer ☐ | Accelerated filer ☒ | Non-accelerated filer ☐ (Do not check if a smaller reporting company) | Smaller reporting company ☐ |
|---|---|---|---|

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant based on the last sale price for such stock on December 26, 2008: $263,684,386.

As of August 21, 2009, the number of outstanding shares of the registrant's common stock, $0.001 par value, was 56,698,022.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Proxy Statement for the Registrant's 2009 Annual Meeting of stockholders are incorporated by reference in Part III of this Form 10-K.

**ACCURAY INCORPORATED**

**YEAR ENDED JUNE 27, 2009**

**FORM 10-K**

**ANNUAL REPORT**

**TABLE OF CONTENTS**

## SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

*This Form 10-K includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends affecting the financial condition of our business. Forward-looking statements should not be read as a guarantee of future performance or results, and will not necessarily be accurate indications of the times at, or by, which such performance or results will be achieved. Factors that could cause our actual results to differ materially include those discussed under "Risk Factors" in Part I, Item 1A of this report. We undertake no obligation to update or revise any forward-looking statements to reflect any event or circumstance that arises after the date of this report.*

## PART I

*Historically, our fiscal year has ended on the Saturday closest to June 30th, so that in a 52 week period, each fiscal quarter consisted of 13 weeks. The additional week in a 53 week year was added to the fourth quarter, making such quarter consist of 14 weeks. Fiscal years 2009, 2008, and 2007 are each comprised of 52 weeks. For ease of presentation purposes, we refer to June 30 as the Company's fiscal year end. On June 23, 2009, our board of directors determined to change the Company's fiscal year end to June 30, beginning with fiscal 2010.*

### Item 1. BUSINESS

### The Company

We have developed the first and only commercially available intelligent robotic radiosurgery system, the CyberKnife system, designed to treat solid tumors anywhere in the body as an alternative to traditional surgery. For over 30 years, traditional radiosurgery systems, or systems that deliver precise, high dose radiation directly to a tumor, have been used primarily to destroy brain tumors. Our CyberKnife system represents the next generation of radiosurgery systems, combining continuous image-guidance technology with a compact linear accelerator, or linac, that has the ability to move in three dimensions according to a patient's treatment plan. Our image-guidance technology continuously acquires images to track a tumor's location and transmits any position corrections to the robotic arm prior to delivery of each dose of radiation. Our linac is a compact radiation treatment device that uses microwaves to accelerate electrons to create high-energy X-ray beams to destroy the tumor. This combination, which we refer to as intelligent robotics, extends the benefits of radiosurgery to the treatment of tumors anywhere in the body. The CyberKnife system autonomously tracks, detects and corrects for tumor and patient movement in real-time during the procedure, enabling delivery of precise, high dose radiation typically with sub-millimeter accuracy. Traditional radiosurgery systems have limited mobility and generally require the use of a rigid frame attached to a patient's skull to provide a coordinate system to effectively target a tumor, which restricts the ability to effectively treat tumors outside of the brain. The CyberKnife system does not have these limitations and therefore has increased flexibility to treat tumors throughout the body from many different directions, while minimizing the delivery of radiation to healthy tissue and vital organs. The CyberKnife procedure requires no anesthesia, can be performed on an outpatient basis and allows for the treatment of patients who otherwise would not have been treated with radiation or who may not have been good candidates for surgery. In addition, the CyberKnife procedure avoids many of the potential risks and complications that are associated with other treatment options and is more cost effective than traditional surgery.

As of June 30, 2009, 176 CyberKnife systems were installed: 115 in the Americas, two of which are pursuant to our shared ownership program, 43 in Asia and 18 in Europe. Our customers have reported that over 70,000 patients worldwide have been treated with the CyberKnife system since its commercial introduction. Our customers have increasingly used the CyberKnife system for indications outside of the

brain for tumors on or near the spine and in the lung, liver, prostate and pancreas. Based on customer data, approximately 58% of patients treated with the CyberKnife system in the United States during the year ended June 30, 2009 were treated for tumors outside of the brain.

The CyberKnife system received U.S. Food and Drug Administration, or FDA, 510(k) clearance in July 1999 to provide treatment planning and image-guided robotic radiosurgery for tumors in the head and neck. In August 2001, the CyberKnife system received 510(k) clearance to treat tumors anywhere in the body where radiation treatment is indicated. The CyberKnife system has also received a CE mark for sale in Europe and has been approved for various indications in Japan, Korea, Taiwan, China and other countries. In Europe, Japan, Korea, Taiwan, and China, the CyberKnife system has received approval to provide treatment planning and image-guided robotic radiosurgery for tumors anywhere in the body where radiation treatment is indicated. We received approval for full-body treatment in Japan in June 2008; previously our CyberKnife regulatory approvals in Japan were limited to treatment for indications in the head and neck.

We were incorporated in California in 1990 and commenced operations in 1992. We reincorporated in Delaware in 2007. Our principal offices are located at 1310 Chesapeake Terrace, Sunnyvale, CA 94089, and our telephone number is (408) 716-4600.

**Cancer Market Overview**

According to the World Health Organization, or WHO, an estimated 7.9 million people died of cancer in 2007, accounting for 13% of all deaths worldwide. Cancer is the second leading cause of death in the United States, after heart disease. The American Cancer Society, or ACS, estimates that approximately 560,000 Americans will die as a result of cancer in 2009. The ACS also estimates that approximately 1.5 million new cases of cancer will be diagnosed in the United States in 2009, with continued increases in the prevalence of cancer forecasted as the U.S. population ages.

Cancers can be broadly divided into two groups: solid tumor cancers, which are characterized by the growth of malignant tumors within the body in areas such as the brain, lung, liver, breast or prostate, and hematological, or blood-borne, cancers, such as leukemia. The ACS estimates that solid tumor cancers accounted for approximately 1.4 million, or approximately 95%, of new cancer cases diagnosed and accounted for approximately 500,000 cancer-related deaths in the United States in 2008. In addition, tumors at the original cancer site, called primary tumors, such as in the breast or prostate, even when diagnosed and treated, can lead to the development of tumors in other locations of the body, called secondary tumors. This is referred to as metastatic disease, the movement of cancer cells from one part of the body to another. We are focused on the treatment of solid cancer tumors.

**Traditional Treatments**

Traditional methods for the treatment of solid tumor cancers include surgery, radiation therapy, chemotherapy and other drugs. Surgery and radiation are forms of local control, because the tumor is either directly removed through surgery or irradiated with the objective of destroying the cancer cells comprising the tumor. Chemotherapy is a systemic treatment method which involves the administration of drugs with the objective of killing cancer cells anywhere in the body, including any remaining cancer cells that were not destroyed by local treatment.

***Surgical Removal of Tumors***

A common treatment approach, if applicable to the patient and tumor type, is the removal of the tumor through surgery, with follow-up radiation therapy to kill any remaining cancer cells in the area surrounding the tumor. Surgery is especially appropriate for certain types of cancer, such as breast cancer, where tumors are often well-defined and surgically accessible. However, many types of solid tumors, including those affecting the brain, the spine, the lungs and various other organs, present

significant challenges to a traditional surgical approach. In many instances, these tumors occur in hard to reach areas or lie within or in close proximity to critical organs. Accordingly, it may be difficult or impossible to surgically access or remove the entire tumor or organ affected. For example, many tumors located near the base of the skull are difficult to treat with traditional surgery without substantial risk of injury to the visual pathways or other critical brain regions.

Traditional surgery is highly invasive because it requires entering the body by incision, is painful and involves significant operative and post-operative risks, including risks associated with anesthesia, infection and other complications. For example, surgery is very difficult to perform on lung tumors because incisions in the sternum are often required to access the lung and because the lung is in motion due to respiration. Lung surgery also entails significant risks of post-surgical complications, including severe bleeding and pneumonia. Traditional surgery also entails significant costs and recovery times, particularly for more complex and difficult surgeries. In addition, for elderly or seriously ill patients, surgery is not typically an alternative, even if the tumor were otherwise operable.

Over the past several years, minimally invasive surgical techniques have been developed to destroy tumors, including cryotherapy, which is the freezing of cancer cells, radiofrequency ablation, a process which heats and destroys tumors, and injection of ethanol directly into tumors; however, these techniques have significant limitations. Cancer cells may not be fully ablated or destroyed and the energy source used in the procedure may damage adjoining healthy tissue or organs. In addition, these techniques are currently only available for a limited range of cancer indications. As a result, these techniques remain in limited use.

***Radiation Therapy***

Radiation therapy has been used for several decades to treat the area around a tumor site, typically as an adjunct to surgery after the tumor has been removed, in an attempt to eliminate remaining cancer cells in that area. Radiation therapy is also used to directly target the tumor in certain instances when surgery is not possible. The goal of radiation therapy is to eliminate all cancer cells in an intended treatment region. However, healthy tissue outside of the intended treatment region also receives substantial radiation. In order to minimize the damage to healthy tissue surrounding the tumor area, a large number of fractions, or staged treatments, are administered daily over multiple weeks. Despite staging treatments over a period of time, radiation therapy can still damage healthy tissue in the treated region, particularly since treatment delivery is relatively imprecise. Besides the potential damage to healthy tissue, radiation therapy may have a number of other adverse side effects including nausea and skin reactions. The nature and severity of these side effects can vary significantly depending on the area of the body treated and on the patient.

Recent advances in radiation therapy have focused on improving the shaping and targeting of the radiation beams to minimize irradiation of healthy tissue. These advances include the development of Intensity Modulated Radiation Therapy, or IMRT, which is designed to vary the intensity and shape of the radiation beam delivered to the tumor, and Image-Guided Radiation Therapy, or IGRT, which is designed to improve targeting accuracy. However, the majority of these treatments are delivered using gantry-based linear accelerator systems that rotate the radiation source on a single axis and therefore have a limited range of motion, which restricts treatment delivery options and generally requires manual repositioning of the patient during treatment. In addition, IMRT and IGRT have a limited ability to accurately target tumors, to conform to the tumor shape, and to detect and compensate for tumor and patient motion during treatment. This results in having a cumulative radiation dose pattern for IMRT and IGRT treatments which generally includes not only the tumor, but also surrounding healthy tissue.

**Development of Radiosurgery**

Based on the demonstrated principles of radiation as a method of destroying cancer cells, manufacturers have developed radiosurgery systems that have initially shown to be effective in the treatment of brain tumors and there have been various attempts to develop similarly accurate systems to perform radiosurgery elsewhere in the body. By destroying the tumor with a high dose of radiation, radiosurgery systems have been shown to be effective at local control without the risks, costs and other limitations of traditional surgery. Radiosurgery systems differ from traditional radiation therapy systems in that they are designed to deliver a very high cumulative dose of radiation, in a single or small number of treatments specifically targeted at the tumor rather than at a region surrounding the tumor area. The delivery of more accurate radiation allows higher doses to be delivered, increasing the probability of tumor cell death and better local control. In addition, radiosurgery can be used on patients who cannot, due to advanced age or other health reasons, tolerate traditional surgery.

One of the initial radiosurgery techniques was frame-based radiosurgery for the treatment of brain tumors, which requires attaching a rigid frame to the patient's head by screwing it into the skull through the skin to immobilize the patient's head and to aid in targeting the tumor. Besides immobilizing the patient, the frame forms a fixed coordinate system that is used to target a tumor inside the head. Once the frame is attached, the physician then images the head, typically with a computed tomography, or CT, scan, to identify the tumor location relative to the frame. The physician then uses the acquired images to develop a treatment plan, and the patient receives treatment. The entire process usually lasts between four and eight hours.

Although frame-based radiosurgery represents an advancement in cancer treatment, it has significant shortcomings. The necessity for a rigid frame to be screwed into a patient's skull or affixed to the body restricts the area of the body which can be treated. In addition, frame-based radiosurgery systems do not generally succeed in conforming the radiation dose to the tumor, because beam orientations are limited, and therefore it is difficult to match the shape of the treated volume with the shape of the tumors. Further, because it is difficult to precisely reposition the head frame for multiple treatments, these systems are very rarely used when more than one dose of radiation is required. Frame-based radiosurgery approaches have been used for treatment of tumors in other parts of the body, but suffer from significant drawbacks. In particular, it is not practical to attach a frame rigidly to parts of the body other than the head. Tumors in soft tissue organs such as the lung, liver, pancreas and prostate are not rigidly fixed to any external reference points and can move significantly during treatment due to normal bodily functions. Frame-based approaches to delivering radiosurgery for tumors in such locations are rarely as accurate as frame-based systems used to treat brain tumors. This lack of accuracy for tumors located outside the head may compromise the efficacy of traditional radiosurgery and increase the likelihood of delivering significant radiation doses to otherwise healthy tissue.

**The CyberKnife System Solution**

We have developed and commercialized the CyberKnife system, an intelligent robotic radiosurgery system designed to treat solid tumors throughout the body where radiation is indicated as an alternative to traditional surgery. The CyberKnife system combines continuous image-guidance technology with a compact linear accelerator mounted on a computer-controlled manipulator arm to precisely deliver high doses of radiation to a tumor from many different directions. Our system tracks, detects and corrects for tumor and patient movement in real-time during treatment and precisely delivers high doses of radiation to a tumor typically with sub-millimeter accuracy. Key benefits of the CyberKnife system include:

***Treatment of inoperable or surgically complex tumors.*** The CyberKnife system can be used to target tumors that cannot be easily treated with traditional surgical techniques because of their location,

number, size, shape or proximity to vital tissues or organs, or because of the age or health of the patient. The CyberKnife system's intelligent robotics are designed to enable the delivery of radiation doses that conform closely to the shape of the tumor. This enables the precise targeting of a tumor, while at the same time minimizing damage to surrounding healthy tissue. Treatments performed with the CyberKnife system can also be staged over two to five treatment sessions.

***Treatment of tumors throughout the body.*** The CyberKnife system has been cleared by the FDA to provide treatment planning and image-guided radiosurgery for tumors anywhere in the body where radiation treatment is indicated. Unlike frame-based radiosurgery systems, which are generally limited to treating brain tumors, the CyberKnife system is being used for the treatment of primary and metastatic tumors outside the brain, including tumors on or near the spine and in the lung, liver, prostate and pancreas.

***Real-time tracking of tumor movement.*** We believe the CyberKnife system is the first device that is designed to enable the treatment of tumors that may change position due to tumor and patient movement during treatment. That ability is achieved with a level of accuracy typically associated with radiosurgery procedures for brain tumors. In addition, our Synchrony motion tracking system enables highly accurate treatment of tumors that move with respiration.

***Significant patient benefits.*** Patients may be treated with the CyberKnife system on an outpatient basis without anesthesia and without the risks and complications inherent in traditional surgery. The CyberKnife procedure is well tolerated. Patients do not require substantial pre-treatment preparation, and typically there is little to no recovery time or hospital stay associated with the CyberKnife procedure. In addition, the CyberKnife system eliminates the need for an invasive rigid frame to be screwed into the patient's skull or affixed to other parts of the body.

***Facilitates additional revenue generation through increased patient volumes.*** We believe that the CyberKnife system allows our customers to effectively treat patients who otherwise would not have been treated with radiation or who may not have been good candidates for surgery. Therefore, we believe the treatment of these patients generates additional revenue without affecting our customers' traditional radiation therapy practices. In addition, because the CyberKnife treatment is a non-invasive, outpatient procedure requiring little or no recovery time, hospitals can treat more patients than through traditional surgery. In traditional surgery, the time a patient must be at the facility for the procedure and the recovery time tend to be measured in days. With the CyberKnife system, the entire procedure is generally completed within 90 minutes, and the patient often leaves the facility very shortly after treatment. Even if the patient receives four to five treatments, the total time the patient is at the hospital or treatment center is still shorter than with traditional surgery. Furthermore, the more time the patient must be at the hospital, the more resources the hospital must dedicate to the patient. The reduction in overall time and resources required for the CyberKnife procedure, when compared to traditional surgery, leads to an increase in the volume of procedures performed and lower per procedure costs for the hospital. The combination of incremental revenue generation and lower per procedure cost makes the CyberKnife system an attractive addition to our customers' cancer treatment practice.

***Upgradeable modular design.*** Our CyberKnife system has a modular design which facilitates the implementation of upgrades without requiring our customers to purchase an entirely new system. We have a well-established track record of developing and delivering state-of-the-art upgrades to our customers, enabling our customers to take advantage of the continued evolution of our CyberKnife system. We continue to develop and offer new clinical capabilities enhancing ease of use, reducing treatment times, improving accuracy and improving patient access.

**Our Strategy**

Our goal is to have the CyberKnife system become the standard of care for the treatment of solid tumors, particularly those that are difficult to treat with traditional surgery. We believe our technology can significantly enhance the applications of radiosurgery by increasing the number and type of tumors which can be treated effectively. Key elements of our strategy include the following:

***Increase physician adoption and patient awareness to drive utilization.*** We are continually working to increase adoption and awareness of our CyberKnife system and demonstrate its advantages over traditional treatment methods. We intend to increase the number of worldwide sales and marketing personnel in order to increase sales and drive utilization of the CyberKnife system. In addition, we will continue to hold and sponsor symposia and educational meetings and to support clinical studies in an effort to demonstrate the clinical benefits of the CyberKnife system. Finally, we will continue to assist our customers in increasing patient awareness in their communities by helping them develop marketing and educational campaigns.

***Continue to expand the radiosurgery market.*** While radiosurgery has traditionally been used to treat brain tumors, the CyberKnife system has received FDA clearance for and is increasingly being used to treat tumors anywhere in the body where radiation is indicated. Based on customer data, approximately 58% of patients treated with the CyberKnife system in the United States during the year ended June 30, 2009 were treated for tumors outside of the brain. We are facilitating studies to further demonstrate the CyberKnife system's efficacy for treating tumors outside of the brain, and we believe these studies will increase overall utilization of the CyberKnife system and continue to expand the number of patients eligible for radiosurgery. In addition, we have developed and are continuing to develop new upgrades to enable the CyberKnife system to be even better suited for treating tumors anywhere in the body where radiation is indicated.

***Continue to innovate through clinical development and collaboration.*** The clinical success of the CyberKnife system is due in large part to the collaborative partnerships we have developed over the last decade with clinicians, researchers and patients. We proactively seek out and rely on constructive feedback from CyberKnife system users to learn what is needed to enhance the technology. Due to this collaborative process, we continually refine and upgrade the CyberKnife system, which ultimately improves our competitive position in the radiosurgery market. Our upgrades are designed to improve the ease of use and accuracy of treatment, decrease the treatment times, and improve the utilization for specific types of tumors. For example, in recent years, we introduced Synchrony, a motion tracking system that is designed to track tumors that move with patient respiration and the Xsight Spine Tracking System, a new target tracking technology, which eliminates the need for surgical implantation of small, inert metal markers, known as fiducials, in the treatment of spinal tumors. In the year ended June 30, 2007, we introduced the Patient Archive and Restore System, the RoboCouch patient positioning system, the Xsight Lung Tracking System, the Xchange robotic collimator changer and the 4D Treatment Optimization and Planning System. In the year ended June 30, 2008, we introduced a higher output linear accelerator, the IRIS Variable Aperture Collimator, MonteCarlo Dose Calculation software, Sequential Optimization treatment planning and a seated RoboCouch, enabling improved patient positioning capabilities. In the year ended June 30, 2009, we introduced the InTempo Adaptive Imaging system, MultiPlan MD Suite, MultiPlan Quick Review, and a Radiosurgery DICOM Interface compatible with the IMPAC MOSAIQ system.

***Leverage our installed base to generate additional recurring revenue.*** We have designed the CyberKnife system so that customers may upgrade their previously purchased systems as we introduce new features. We generate additional revenue by selling multiyear service plans that provide eligibility to receive upgrades, when and if available. These contracts are typically signed prior to the CyberKnife system installation and generate additional revenue throughout the life of the contract. In addition, we sell upgrades to our existing customers who are not covered by service plans or who have exhausted the

upgrades deliverable pursuant to their service plans. Finally, we offer the shared ownership program, which enables customers to reduce the upfront investment required for the CyberKnife system in exchange for sharing a significant portion of revenue with us that is derived from each procedure.

***Continue to expand international sales and geographic reach.*** We intend to increase our sales and distribution capabilities outside of the United States to take advantage of the large international opportunity for our products. We currently have regional offices in Paris, France, Hong Kong, China, Tokyo, Japan, Madrid, Spain, New Delhi, India, Singapore, Moscow, Russia, Munich, Germany, London, UK and Istanbul, Turkey and our sales and distribution channels cover more than 80 countries. We intend to increase our international revenue by increasing the number of distributors and direct sales and support personnel in targeted new international markets, and by further penetrating our established international markets.

***Pursue acquisitions, strategic partnerships and joint ventures.*** We intend to actively pursue acquisitions, strategic partnerships and joint ventures that we believe may allow us to complement our growth strategy, increase market share in our current markets and expand into adjacent markets, broaden our technology and intellectual property and strengthen our relationships with our customers.

**The CyberKnife System**

Our principal product is the CyberKnife system, an intelligent robotic radiosurgery system that enables the treatment of tumors anywhere in the body where radiation is indicated without the need for invasive surgery or rigid frames. The current United States list price for the CyberKnife system ranges from approximately $4.2 million to $5.75 million, depending upon system configuration and options purchased by the customer. The list price typically includes initial training, installation and a one-year warranty. We also offer optional hardware and software, technical enhancements and upgrades to the CyberKnife system, as well as service contracts and training to assist customers in realizing the full benefits of the CyberKnife system. As of June 30, 2009, we had 176 units installed at customer sites: 115 in the Americas, two of which are pursuant to our shared ownership program, 43 in Asia and 18 in Europe.

The CyberKnife system combines continuous image-guidance technology with a compact linear accelerator mounted on a computer-controlled manipulator arm to precisely deliver high doses of radiation to the tumor from numerous directions during treatment. Our patented image-guidance technology correlates low dose, real-time treatment X-rays with images previously taken with a CT scan of the tumor and surrounding tissue to precisely direct each beam of radiation. This enables delivery of a highly conformal, non-isocentric dose of radiation to the tumor, with minimal radiation delivered to surrounding healthy tissue. With its autonomous ability to track, detect and correct for even the slightest tumor and patient movement throughout the entire treatment, the CyberKnife system gives clinicians an effective, uninterrupted and accurate treatment alternative.

Key components and technologies of the CyberKnife system include the following:

***Compact X-band linear accelerator.*** This compact linac generates the radiation that destroys the tumor. We believe we are the only commercial manufacturer of a compact X-band linac. This technology allows us to manufacture linacs that are smaller and weigh significantly less than standard medical linacs used in radiation therapy while achieving similar performance. Our linac can provide high energy X-ray beams of different diameters and intensities without the use of radioactive material. In fiscal 2008, we introduced a linac capable of delivering 800 monitor units per minute of energy output, representing the highest output linac we have offered.

***Robotic manipulator.*** The manipulator arm, with six-degrees-of-freedom range of movement, is designed to move and direct the linac with an extremely high level of precision and repeatability. The manipulator arm allows doses of radiation to be delivered from nearly any direction and position,

without the limitations of gantry-based systems, creating a non-isocentric composite dose pattern that can precisely conform to the shape of each treated tumor. This flexibility enhances the ability to diversify beam trajectories and beam entrance and exit points, helping to minimize risks of radiation damage to healthy cells near the tumor. Furthermore, the rapid response time of the manipulator arm allows tracking of tumors that move with respiration in real time.

***Real-time image-guidance system with continuous target tracking and feedback.*** Without the need for clinician intervention or treatment interruption, the CyberKnife system's revolutionary real-time image-guided robotics enables the CyberKnife system to continuously monitor and correct for patient and tumor movements throughout treatment. The CyberKnife system is able to provide the precise delivery of radiation because of the virtually instantaneous and continuous feedback loop between X-ray-based target localization and automatic correction of the radiation beam throughout the entire treatment. This target tracking and feedback technology uses two digital image detectors to capture low energy X-ray images. The image guidance software carries out an automated comparison of the X-ray images with the patient's CT scan to detect, track and correct for any movement of the tumor or patient before and during the treatment delivery. This allows the CyberKnife system to dynamically target the tumor and adjust the position of the beam to follow the motion of the tumor throughout the treatment, directing the beam to precisely match tumor movement.

***X-ray sources.*** The low-energy X-ray sources generate X-ray images to determine the location of bony landmarks or implanted fiducials throughout the entire treatment.

***Image detectors.*** The image detectors capture high-resolution anatomical images throughout the treatment. These live images are continually compared to previously captured digitally reconstructed radiographs to determine real-time patient positioning. Based on this information, the robotic manipulator instantly corrects for any detected movement.

In addition to the key components listed above, we also offer the following components and features, including:

***Synchrony respiratory tracking system.*** The CyberKnife system employs a proprietary motion tracking system called Synchrony, for targeting tumors that move during respiration. Synchrony software and hardware correlate tumor movement due to respiration with the CyberKnife system treatment beam allowing it to continuously track the tumor as it moves throughout the respiratory cycle. Through this process the CyberKnife system delivers beams synchronized in real-time to tumor position while adapting to changes in breathing patterns, allowing for the delivery of highly conformed radiation beams while reducing areas exposed to radiation and unprecedented clinical accuracy of approximately 1.5 millimeters.

***Xsight Spine Tracking System.*** For most extracranial tumors, the CyberKnife system uses implanted fiducials to track the position of the tumor throughout treatment. However, the Xsight Spine Tracking System eliminates the need for surgical implantation of fiducials in the delivery of radiosurgery treatments on or near the spine. The Xsight Spine Tracking System utilizes skeletal structures to automatically locate and track tumors with sub-millimeter accuracy. We believe no other commercially available technology today offers this capability.

***Xsight Lung Tracking System.*** The Xsight Lung Tracking System delivers radiosurgical accuracy to some lung tumors without the need for implanted fiducials. The Xsight Lung Tracking System directly tracks the anatomy of the tumor. Integrated with the Synchrony Respiratory Tracking System, treatment margins are significantly minimized by tracking the motion of the tumor as it moves in respiration.

***RoboCouch patient positioning system.*** Fully integrated with the CyberKnife system, the RoboCouch intelligently positions the patient to the planned treatment position with unprecedented accuracy, providing not only greater set up precision, but significantly streamlining the patient set up process.

The versatility of the RoboCouch allows for automated patient positioning prior to treatment. Additionally, the RoboCouch offers greater positioning flexibility, a lower patient loading height, and a higher patient weight capacity limit when compared to our standard treatment couch.

***Standard treatment couch.*** Our standard treatment couch is a computer-controlled treatment couch that is integrated with the image-guidance system. The treatment couch automatically aligns the patient for treatment at the beginning of the procedure. The treatment couch also positions the patient so that the tumor is in the center of the imaging field. When the tumor is correctly positioned, treatment begins and the CyberKnife system tracking software guides the radiation beams to the precise tumor location.

***Xchange robotic collimator changer.*** The Xchange robotic collimator changer automatically exchanges secondary collimators, which determine the radiation beam size, during the treatment. The use of multiple collimators can enable faster treatments than the use of a single collimator.

***Iris variable aperture collimator.*** The IRIS variable aperture collimator enables delivery of beams in 12 unique sizes with a single collimator. This can significantly reduce treatment times as well as the total radiation dose delivered to the patient. IRIS is offered in conjunction with the Xchange robotic collimator changer.

***4D Treatment Optimization and Planning System.*** Our 4D Treatment Optimization and Planning System optimizes treatment by taking into account the movement of the tumor as well as the movement and deformation, or change in shape, of the surrounding tissue, thereby minimizing margins and radiation exposure to healthy tissue.

***InTempo Adaptive Imaging System.*** Our InTempo System is a time-based target tracking technology used to compensate for intrafraction prostate motion during treatment delivery. With the InTempo System, our users can utilize adaptive imaging to automatically adjust for large movements in patients during treatment by increasing the X-ray imaging frequency. The user also manages the image age of X-ray images by specifying how long to wait between images.

***MultiPlan treatment planning system.*** Our proprietary intuitive planning system called MultiPlan is designed for radiosurgery and includes a standard computer workstation. MultiPlan calculates a treatment plan that produces a pattern of radiation designed to conform to the tumor. The MultiPlan system uses input images from multiple modalities, including computed tomography, or CT, magnetic resonance imaging, or MRI, positron emission tomography, or PET, and 3D angiography. After the physician outlines a tumor and critical adjacent tissues on the computer, a radiation scientist uses the MultiPlan system to plan the number, intensity, position and direction of radiation beams. Using unique and patented software algorithms, the system calculates and displays the resultant treatment plan for evaluation, optimization and approval by the physician.

***MultiPlan MD Suite.*** Our MultiPlan MD Suite solution allows users to perform pre-planning preparation and post-planning review of treatment plans. MD Suite can be located either local to, or remote from the CyberKnife System. It allows tasks such as contouring, fusion, review and approval of treatment plans, and changing of treatment plan parameters. MultiPlan MD Suite also networks directly to the CyberKnife central database management system (CDMS).

***CyberKnife® Data Management System.*** The CyberKnife® Data Management System provides comprehensive storage and processing of the patient data that is generated as the patient progresses through the CyberKnife planning and treatment workflow pre-planning data, such as planning CT images, are imported and stored in the data management system. This information is then available for review by the clinician. The results of a patient's treatment delivery, such as dose delivered from each beam, each path and each fraction, as well as details about the images acquired and corrections applied are recorded and stored in the data management system.

***MultiPlan Quick Review.*** Our MultiPlan Quick Review allows multiple sessions of the MultiPlan Treatment Planning System to be run simultaneously with one primary and up to three secondary sessions being accessible. The primary session has full treatment planning functionality while the secondary sessions can perform all planning functions except for optimization. MultiPlan Quick Review improves clinical workflow by allowing data from multiple patients, or multiple plans from the same patient, to be accessed simultaneously.

***Radiosurgery DICOM Interface.*** In a typical oncology department there are many individual systems that play a role in patient diagnosis and treatment delivery. Each of these systems separately manages their own specialized piece of information about a patient. Often a centralized information management system such as an Oncology Information Systems (OIS) is used to minimize the need for the clinical user to access each of these separate systems individually to gather information. Centralization of the patient's oncology treatment record into a single digital record provides clinical benefits that can be realized immediately. Data management systems, such as the CyberKnife® Data Management System, utilize industry-standard interface protocols, such as DICOM, to export patient information to the OIS. Using industry-standard interface protocols, the CyberKnife® Robotic Radiosurgery System completes the OIS electronic medical record with a comprehensive export of the radiosurgery treatment history. Note: The Radiosurgery DICOM Interface requires a compatible version of the Oncology Information System (OIS), a compatible version of the IMPAC MOSAIQ system is required.

***Monte Carlo dose calculation.*** Our Monte Carlo dose calculation software uses Monte Carlo simulation algorithms in treatment planning and dose calculation. Our Monte Carlo dose calculation algorithm can perform the necessary treatment planning calculations in a significantly shorter time frame as compared to conventional Monte Carlo dose calculation methods, thereby accelerating the treatment planning process.

***Sequential Optimization treatment planning.*** Sequential optimization treatment planning enables CyberKnife System users to define and prioritize treatment planning objectives for each treatment plan. These objectives can include treatment dose to the targeted tumor, dose minimization in surrounding areas and total radiation delivery throughout the treatment. Sequential optimization enables these objectives to be prioritized and tailored to the unique clinical characteristics of each patient.

***Patient Archive and Restore System.*** The Patient Archive and Restore System increases utilization by moving the archive and restore processes from the treatment delivery workstation to an independent archiving system.

***InView remote review system.*** The CyberKnife system employs a remote review workstation to allow referring physicians to participate in the treatment process, called InView. InView allows physicians to combine and contour diagnostic images as well as review potential treatment plans as generated by MultiPlan prior to the CyberKnife procedure. By placing InView in physician offices or clinics, we believe that we can expand the number of patients referred for treatment using the CyberKnife system.

**CyberKnife System Clinical Procedure**

The CyberKnife procedure involves scanning, planning, treatment and follow-up, and may be performed on an outpatient basis.

***Scanning.*** Prior to treatment with the CyberKnife system, the patient undergoes imaging procedures to determine the size, shape and location of the tumor. The process begins with a standard high-resolution CT scan. Preparation for the scan may also include the placement of fiducials, in or around the tumor when treating tumors outside the brain. For certain tumors, such as brain and spinal

tumors, where greater differentiation between different types of soft tissue is required, other imaging techniques, such as MRI, angiography, or PET, may also be used to more accurately differentiate the tumor from surrounding healthy tissue. Our software helps integrate CT scans and other imaging data into the pre-treatment planning process.

***Planning.*** Following the scanning, the image data is then digitally transferred to the CyberKnife system's treatment planning workstation, where the treating physician identifies the exact size, shape and location of the tumor to be targeted and the surrounding vital structures to be avoided. A qualified physician and/or radiation scientist or physicist then uses our proprietary software to generate a treatment plan to provide the desired radiation dose to the identified tumor location without exceeding the tolerance of adjacent healthy tissue. As part of the treatment plan, our proprietary planning software automatically determines the number, duration and angles of delivery of the radiation beams.

***Treatment.*** During a CyberKnife procedure, a patient lies on the treatment table, which automatically positions the patient. Anesthesia is not required, as the procedure is painless and non-invasive. The treatment, which generally lasts between 30 and 90 minutes, typically involves the administration of between 100 and 200 radiation beams delivered from different directions, each lasting from 10 to 15 seconds. Prior to the delivery of each beam of radiation, the CyberKnife system has the ability to simultaneously take a pair of X-ray images and compare them to the original CT scan. This image guided approach continuously tracks, detects and corrects for any movement of the patient and tumor throughout the treatment to ensure precise targeting. The patient usually leaves the facility immediately upon completion of the procedure.

***Follow-up.*** Follow-up imaging, generally with either CT or MRI, is usually performed in the weeks and months following the treatment to confirm the destruction and eventual elimination of the treated tumor.

**Shared Ownership Program and Other Services**

We provide a variety of services to support the operation and use of our CyberKnife systems. We expect that these services will enable us to generate a recurring revenue stream that will continue to make up an important portion of our revenue.

***CyberKnife System Shared Ownership Program***

We offer the shared ownership program under which we provide a CyberKnife system to a customer while retaining ownership of that system. In addition, we provide physician training, educational support, general reimbursement guidance and technical support, as well as possible future upgrades to customers under this program. In return, these customers are generally required to pay us the greater of a minimum payment or a portion of the revenue generated through the use of the CyberKnife system. Generally, this minimum monthly payment is equivalent to the revenue generated from treating three to four patients per month, and any revenue received from additional patients is shared between us and the customer. Customers who participate in our shared ownership program are responsible for costs associated with facility preparation and professional and administrative personnel required to operate the CyberKnife system. Our legacy shared ownership program was known as our "placement program."

Agreements under the shared ownership program typically have a term of five years, during which the customer has the option to purchase the system, either at the end of the contractual period or earlier, at the customer's request, at pre-determined prices. Through June 30, 2009, we had installed 18 systems under our shared ownership program, 16 of which had subsequently been sold by that date. During the years ended June 30, 2009, 2008 and 2007, $3.2 million, $23.7 million and $3.0 million, respectively, of revenue was recognized in the consolidated statements of operations for the sale of two,

twelve, and one CyberKnife systems, respectively, that were formerly under the shared ownership program. At June 30, 2009 and 2008, 747,000 and $2.3 million, respectively, of amounts for extended warranty and training services related to these sold shared ownership units remained recorded as deferred revenue, and will be recognized over the life of the extended warranty service period and as training service obligations are fulfilled. As of June 30, 2009, two shared ownership units remained active in our installed base.

***Warranty and Support Services***

We generally provide a one-year warranty on the purchase of the CyberKnife system. The warranty period commences on completion of system installation. For the period following the initial one-year warranty, customers can enroll in one of our multiyear service plans for a fee that is fixed at the time of system purchase.

***Diamond Elite multiyear service plan.*** Under our Diamond Elite multiyear service plan, or Diamond plan, our customers have the opportunity to acquire up to two unspecified future upgrades per year, when and if they become available. If we offer more than two upgrades a year, customers can exchange their right to receive future upgrades for the current upgrades available. Currently, the Diamond plan lists for $495,000 per year and is typically for a term up to five years, cancellable by the customer.

***Emerald multiyear service plans.*** We also offer an Emerald multiyear service plan, or Emerald plan, following the initial one-year warranty period. We provide services under our Emerald agreements during the one-year warranty if the agreement is signed before the start of the warranty period. Under our Emerald plan, customers receive a higher level of support, including a faster response time and coverage for all replacement parts than under our basic service plan. Currently, the list price of our Emerald plan is $325,000.

***Extended Warranty.*** We now offer our customers the option to purchase an extended warranty for one or two years following the expiration of their initial warranty period. Currently, the list price for the Extended Warranty is $240,000 per year.

***First Level Maintenance Credit.*** We now offer any customer who purchases the Diamond plan or Emerald plan the option to provide first level maintenance (for example, basic service and troubleshooting assistance) for the CyberKnife System prior to contacting us for support, which currently entitles a customer to a credit, which currently lists for $85,000 per year, against the Diamond plan or Emerald plan (contingent upon the customer's paying for and receiving appropriate first level maintenance training).

***Legacy multiyear service plans.*** Prior to introducing our Diamond plan, we offered a Platinum Elite multiyear service plan, or Platinum plan, to customers in the United States and our Gold Elite multiyear service plan, or Gold plan, to customers outside the United States. Although these plans are no longer offered, as of June 30, 2009 we were still servicing approximately 24 customers pursuant to both of these legacy multiyear service plans. These multiyear service plans typically have a four year term, including the one-year warranty period, and are cancellable by the customer. Beginning in November 2005, we phased out offering these legacy service plans to new customers. In fiscal year 2009, we also phased out our basic multiyear service plan, which had a list price of $200,000 per year and was for a term of up to four years.

Under the Platinum plan, in addition to technical support, customers have the opportunity to acquire up to two future upgrades per year for a maximum of eight upgrades over the three or four year term of the arrangement, for an annual fee of approximately $425,000. If we do not offer at least two upgrades per year, the customer would be entitled to a refund of up to $100,000 for each upgrade not offered. We have not yet established objective evidence of fair value of those future obligations;

hence, generally accepted accounting principles in the United States, or GAAP, requires that we cannot begin to recognize any of the revenue derived from the sale of a CyberKnife system or the associated service plan until those specified obligations have been fulfilled. Therefore, the payments made by our customers who have our legacy Platinum plan are categorized as deferred revenue and will be recognized as revenue when we fulfill all obligations to deliver upgrades or the Platinum contract lapses. Once we fulfill all upgrade obligations with respect to a specific Platinum plan or the plan lapses, we will ratably recognize the revenue from the sale of the CyberKnife system and the Platinum plan over the remaining life of the contract.

Under the Gold plan, customers typically have the opportunity to acquire up to two unspecified future software upgrades per year, for an annual fee of approximately $350,000. If we do not offer an upgrade in any particular year, the customer would be entitled to a refund of up to $100,000 for each upgrade not offered, except in Japan. Pursuant to the Gold plan customers are required to pay for additional hardware if required for the implementation of new software features.

To date no refunds have been required pursuant to these legacy multiyear service plans.

***Installation and service.*** We perform the installation and service of the CyberKnife system in the United States and in selected countries outside the United States. In addition, we have trained third-party service organizations and trained our distributors in Korea, Taiwan, Turkey, India, China, Russia, Ukraine and Italy to perform the CyberKnife system installation and service. We employ service engineers and technical staff with a high degree of expertise, which is required due to the complexity of the CyberKnife system.

***Training.*** In addition to the training we offer with the initial installation of the CyberKnife system and the training required when an upgrade is installed, we offer various training sessions for our customers or our distributors for an additional fee.

**Sales and Marketing**

We currently market the CyberKnife system through a direct sales force in the United States and a combination of direct sales personnel and distributors in the rest of the world. Support of our international sales is handled through our European and Asian headquarters in Paris, France, Hong Kong, China and Tokyo, Japan.

In the United States we use a combination of regional sales directors, account specialists, customer account sales executives, product managers and training specialists. Regional sales directors and account specialists are responsible for selling the CyberKnife system to hospitals and stand-alone treatment facilities. Our customer account sales executives sell upgrade products to existing customers. Our product managers help market our current products and work with our engineering group to identify and develop upgrades and enhancements for the CyberKnife system. Our training specialists train radiation oncologists, surgeons, physicists and radiation therapists.

In addition, we recently established a corporate accounts group within the sales organization. This group has responsibility for targeting major national and strategic accounts including hospital groups, operators of multiple radiation oncology centers and group purchasing organizations. We believe that organizations of this nature represent an opportunity for CyberKnife system sales and that they require a different sales focus due to their national or multi-regional scope.

In addition to marketing to hospitals and stand-alone treatment facilities, we market to radiation oncologists, neurosurgeons, general surgeons, oncology specialists and other referring physicians. We will continue to increase our focus on marketing and education efforts to surgical specialists and oncologists responsible for treating tumors throughout the body. Our marketing activities also include efforts to inform and educate cancer patients about the benefits of the CyberKnife system.

According to estimates published by the American Society for Therapeutic Radiology and Oncology, or ASTRO, there are over 2,000 hospitals and stand-alone treatment facilities in the United States providing radiation therapy services. Our current United States sales and marketing focus is to target the hospitals and treatment facilities currently providing radiation therapy services, however, in the future we believe that the CyberKnife system will also be marketed to hospitals that do not have radiation therapy facilities.

From time to time, we may provide our linac system for use in non-medical areas. These areas may include non-destructive testing, visual inspection and other potential applications. We do not currently expect these non-medical uses to represent a significant portion of our revenue in the near term.

**Manufacturing and Assembly**

We purchase major components of the CyberKnife system, including the robotic manipulator, treatment table or robotic couch, magnetron, which creates the microwaves for use in the linac, imaging cameras and computers, from outside suppliers. We manufacture certain other electronic and electrical subsystems, including the linac, at our Sunnyvale, California and Mountain View, California facilities. We then assemble and integrate these components with our proprietary software for treatment planning and treatment delivery and perform essential testing prior to shipment to customer sites.

Single source suppliers presently provide us with several components, including the magnetron, the treatment couches and the imaging plates. In most cases, if a supplier were unable to deliver these components, we believe that we would be able to find other sources for these components subject to any regulatory qualifications, if required. In the event of a disruption in any of these suppliers' ability to deliver a component, we would need to secure a replacement supplier. Additionally, any disruption or interruption of the supply of key subsystems could result in increased costs and delays in deliveries of CyberKnife systems, which could adversely affect our reputation and results of operations.

**Intellectual Property**

The proprietary nature of, and protection for, our products, product components, processes and know-how are important to our business. We seek patent protection in the United States and internationally for our product systems and other technology where available and when appropriate. Our policy is to patent or in-license the technology, inventions and improvements that we consider important to the development of our business. In addition, we use license agreements to selectively convey rights to our intellectual property to others. We also rely on trade secrets, know-how and continuing innovation to develop and maintain our competitive position.

We had 13 U.S. patent applications allowed in the fiscal year ended June 30, 2009. As of June 30, 2009, we held 40 U.S. patents, 63 pending U.S. patent applications and are pursuing additional patent applications on additional key inventions to enhance our intellectual property rights. The first of our patents will expire in October 2010 and currently the last of our patents will expire in 2026. As of June 30, 2009, we also held 22 foreign patents, 7 pending published Patent Cooperation Treaty applications and 65 foreign patent applications which correspond to our issued U.S. patents and pending U.S. patent applications. We cannot be sure that any patents will issue from any of our pending patent applications, nor can we assure you that any of our existing patents or any patents that may be granted to us in the future will be commercially useful in protecting our technology. An additional key component of our intellectual property is our proprietary software used in planning and delivering the CyberKnife system's therapeutic radiation dose.

In addition to our patents, we also rely upon trade secrets, know-how, trademarks, copyright protection and continuing technological and licensing opportunities to develop and maintain our competitive position. We require our employees, consultants and outside scientific collaborators to

execute confidentiality and invention assignment agreements upon commencing employment or consulting relationships with us.

Patents may provide some degree of protection for our intellectual property. However, patent protection involves complex legal and factual determinations and is therefore uncertain. In addition, the laws governing patentability and the scope of patent coverage continue to evolve, particularly in the areas of technology of interest to us. As a result, we cannot assure you that patents will issue from any of our patent applications. The scope of any of our issued patents may not be sufficiently broad to offer meaningful protection. In addition, our issued patents or patents licensed to us may be successfully challenged, invalidated, circumvented or unenforceable so that our patent rights would not create an effective competitive barrier. Moreover, the laws of some foreign countries may not protect our proprietary rights to the same extent as do the laws of the United States. In view of these factors, our intellectual property positions bear some degree of uncertainty.

In April 2007, we entered into a License and Development Agreement with CyberHeart, Inc., or CyberHeart. As part of this agreement, we will license certain intellectual property rights and technologies to CyberHeart, which CyberHeart will use to develop and commercialize new systems and applications in the field of cardiac disease. In the event CyberHeart is able to successfully develop and commercialize such an application, under the agreement, we would be the sole supplier of radiosurgery equipment to CyberHeart and would also be entitled to receive specified payments based on usage of the CyberHeart system. Roderick Young, a former member of our board of directors, is a founder, officer and director of CyberHeart, Inc.

In December 2004 and in connection with our acquisition of American Science & Engineering's, or AS&E's, High Energy Systems, or HES, business, in January 2005, we entered into a license agreement with AS&E relating to the intellectual property we obtained from the HES acquisition. We granted AS&E an exclusive, worldwide, fully paid license for use of the purchased intellectual property in the national security and non-destructive testing markets, as well as a non-exclusive worldwide, fully paid license of the intellectual property for all uses other than (a) the national security and non-destructive testing markets and (b) medical use or applications. In addition, we received an exclusive, worldwide, fully paid license to any modifications, improvements, enhancements or new developments to the acquired intellectual property by AS&E which are limited to medical uses or applications. We recently began the development of a next-generation linac, using technology developed independently from the intellectual property we obtained from the HES acquisition. We are developing this technology for medical uses and applications and other markets, including national security and non-destructive testing. In October 2006, January 2007 and February 2007, we received correspondence from AS&E expressing concerns that we may be using the intellectual property obtained from the HES acquisition in a manner that breaches, or is intended to breach, our contractual obligations under the license agreement. As of June 30, 2009, we have not received any further correspondence from AS&E regarding this issue. The intellectual property at issue relates to the development of a next-generation linac for use in national security and non-destructive testing areas, as well as medical uses. We are developing the technology used in the next-generation linac independently from the intellectual property we obtained from the HES acquisition. While we do not believe our activities breach or violate the terms of the license agreement, we cannot assure you that AS&E will not assert that we are breaching our obligations under our license agreement with them.

In July 1997, we entered into a license agreement with The Board of Trustees of the Leland Stanford Junior University for technology and patents to develop, manufacture, use and sell products utilizing feature matching technology to align images used in radiosurgery.

Although we are not currently a party to any legal proceedings relating to our intellectual property, in the future, third parties may file claims asserting that our technologies or products infringe on their intellectual property. We cannot predict whether third parties will assert these claims against

us or against the licensors of technology licensed to us, or whether those claims will harm our business. If we are forced to defend against these claims, whether they are with or without any merit, whether they are resolved in favor of or against us or our licensors, we may face costly litigation and diversion of management's attention and resources. As a result of these disputes, we may have to develop costly non-infringing technology, or enter into licensing agreements. These agreements, if necessary, may be unavailable on terms acceptable to us, if at all, which could seriously harm our business or financial condition.

**Research and Development**

Continued innovation is critical to our future success. Our current product development activities include projects expanding clinical applications in radiosurgery, driving product differentiation, and continually improving the CyberKnife system's capabilities. Some of our product upgrades include Synchrony, Xsight Spine Tracking System, InView, MultiPlan, RoboCouch, IRIS, MonteCarlo dose calculation, Sequential Optimization treatment planning, InTempo, MultiPlan MD Suite, MultiPlan Quick Review, and Radiosurgery DICOM Interface. Research activities strive to enable new product development opportunities by developing new technologies and advancing areas of existing core technology such as a next generation linac.

The modular design of our products supports rapid development for new clinical capabilities and performance enhancements by generally allowing each subsystem to evolve within the overall platform design. Access to regular product upgrades protects customer investment in the CyberKnife system, facilitates the rapid adoption of new features and capabilities among existing installed base customers, and drives increasing value in our multiyear service plans. These upgrades will generally consist of software and hardware enhancements designed to increase the ease of use of our CyberKnife system and improve the speed and accuracy of treatment.

As of June 30, 2009, we had 123 employees in our research and development departments. Research and development expenses for the fiscal years ended June 30, 2009, 2008 and 2007 were $36.0 million, $32.9 million and $26.8 million, respectively. We plan to continue to increase our investment in research and development in future periods.

**Competition**

The medical device industry in general, and the non-invasive cancer treatment field in particular, are subject to intense and increasing competition and rapidly evolving technologies. Because our products often have long development and regulatory approval cycles, we must anticipate changes in the marketplace and the direction of technological innovation and customer demands. To compete successfully, we will need to continue to demonstrate the advantages of our products and technologies over well-established alternative procedures, products and technologies, and convince physicians and other healthcare decision makers of the advantages of our products and technologies. Traditional surgery, minimally invasive procedures, radiation therapy, chemotherapy and other drugs are other means to treat cancer. Also, we compete directly with frame-based radiosurgery systems primarily from Elekta AB (publ), or Elekta, BrainLAB AG, and the Integra Radionics business of Integra Life Sciences Holding Corporation.

The market for standard linacs is dominated by three companies: Elekta, Siemens AG, or Siemens, and Varian Medical Systems, Inc., or Varian. In addition, TomoTherapy Incorporated, or TomoTherapy, markets a radiation therapy product. The CyberKnife system does not perform radiotherapy, which uses low doses of radiation over a long period of time with fractionated treatments to kill cancer cells, and generally does not compete directly with standard medical linacs that perform traditional radiotherapy, although some manufacturers of standard accelerator systems, including Varian and Elekta, have products that can be used in combination with body and/or head frame systems and image-guidance

systems to perform radiosurgery. In addition, many government, academic and business entities are investing substantial resources in research and development of cancer treatments, including surgical approaches, radiation treatment, drug treatment, gene therapy, which is the treatment of disease by replacing, manipulating, or supplementing nonfunctional genes, and other approaches. Successful developments that result in new approaches for the treatment of cancer could reduce the attractiveness of our products or render them obsolete.

Our future success will depend in large part on our ability to establish and maintain a competitive position in current and future technologies. Rapid technological development may render the CyberKnife system and its technologies obsolete. Many of our competitors have or may have greater corporate, financial, operational, sales and marketing resources, and more experience in research and development than we have. We cannot assure you that our competitors will not succeed in developing or marketing technologies or products that are more effective or commercially attractive than our products or that would render our technologies and products obsolete. We may not have the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. Our success will depend in large part on our ability to maintain a competitive position with our technologies.

Our competitive position also depends on:

- widespread awareness, acceptance and adoption of our products by the radiation oncology and cancer therapy markets;
- the discovery of new technologies that improve the effectiveness and productivity of the CyberKnife system radiosurgery process;
- availability of coverage and reimbursement from third-party payors, insurance companies and others for procedures performed using the CyberKnife system;
- properly identifying customer needs and delivering new upgrades to address those needs;
- published studies supporting the efficacy and safety of the CyberKnife system;
- limiting the time required from proof of feasibility to routine production;
- limiting the timing and cost of regulatory approvals;
- the manufacture and delivery of our products in sufficient volumes on time, and accurately predicting and controlling costs associated with manufacturing, installation, warranty and maintenance of the products;
- our ability to attract and retain qualified personnel;
- the extent of our patent protection or our ability to otherwise develop proprietary products and processes; and
- obtaining any necessary United States or foreign regulatory approvals or clearances.

**Reimbursement**

In the United States, healthcare providers generally rely on third-party payors; private insurers and governmental payors such as Medicare and Medicaid, to cover and reimburse all or part of the cost of a medical procedure performed with a medical device. Our ability to commercialize our products successfully depends in significant part on the extent to which third-party payors provide and maintain appropriate coverage and reimbursement for our products and related procedures. Medicare coverage and reimbursement policies are particularly significant to our business. If our customers are unable to obtain reimbursement in connection with the use of our products, they may decrease their use of our products or discontinue using them altogether. Not only is Medicare the single largest third-party payor, but many other governmental and commercial payors follow its coverage and reimbursement

policies. The Medicare coverage and reimbursement policies are developed by the Centers for Medicare and Medicaid Services (CMS), the federal agency responsible for administering the Medicare program and by its contractors. Medicare reimbursement rates for the same or similar procedures vary due to geographic location, type of the facility in which the procedure is performed, and other factors.

Medicare coverage for many procedures using our technology currently exists in the hospital outpatient setting and in the free-standing clinic setting. For hospital outpatient procedures, where most procedures using our CyberKnife system are performed, Medicare payments generally are made under a prospective payment system, which is based on the Ambulatory Payment Classifications, or APCs, under which procedures are categorized.

CMS assigns procedures that are comparable clinically and in terms of resources to the same APC. Hospitals are paid the applicable APC payment rate for the outpatient procedure, regardless of the actual cost for such treatment. For calendar year 2009, the national unadjusted average Medicare payment rate for procedures billed using HCPCS code G0339 (for the first CyberKnife treatment) is $3,803, and $2,580 for code G0340 (for each additional CyberKnife treatment). Payment for the free-standing clinic setting is governed by the final Medicare Physician Fee Schedule, and the practice amongst regional Medicare contractors currently varies both in terms of whether they use HCPCs code G0339 and G0340 for CyberKnife procedures, and also in terms of what they pay for CyberKnife procedures.

In addition to Medicare reimbursement to hospitals and clinics, physicians receive reimbursement for their professional services in the hospital outpatient setting and the free-standing clinic setting. Payment to physicians is based on the Medicare Physician Fee Schedule, and payment amounts are updated on an annual basis. For 2009, the American Medical Association, or AMA, issued guidance that deleted Current Procedural Technology, or CPT, code 61793, the Category I CPT code describing the surgeon's role in the delivery of radiosurgery services, and issued the following new CPT codes: 61796, 61797, 61798, 61799, 61800, 63620 and 63621, all relating to neurosurgical procedures that should be used for intracranial and spinal procedures only. Medicare and third-party payors will require the use of these new CPT codes to describe neurosurgeon work for radiosurgery services using our technology for cranial and spinal procedures. Radiosurgery procedures in other anatomies require other surgeons to bill unlisted CPT codes with no assigned payment rates. Payment rates for unlisted codes are set by the local Medicare carrier and rates may vary from no payment to rates equivalent to the comparable CPT rates for the 61796 series of CPT codes. Coding for other physicians (primarily radiation oncologists) involved in the delivery of CyberKnife treatment remains unchanged.

While private third-party payors frequently follow Medicare coverage, coding and payment determinations, we cannot assure you that these payors will adopt coverage and reimbursement policies similar to those established by Medicare or whether they will cover and reimburse the procedures using CyberKnife systems in whole or in part. In the United States, we believe that a majority of private healthcare payors currently provide coverage for some CyberKnife procedures under negotiated contracts with hospitals and clinics.

The current emphasis on cost-containment by third-party payors complicates the task of obtaining appropriate coverage and reimbursement. Often, it is necessary to convince these payors that the new devices or procedures will establish an overall cost savings compared to currently reimbursed devices and procedures. We believe that in many cases the CyberKnife system may offer an opportunity for payors to reduce the cost of treatment for solid tumors; however, we cannot assure you that payors will agree that these advantages exist or that payors will make reimbursement decisions based upon any such advantages. Adequate reimbursement is obviously a key factor for hospitals and physicians considering the purchase of our products, and hence sales by our company.

Reimbursement by third-party payors is often positively influenced by the existence of peer-reviewed publications of long-term safety and efficacy data. Data have been published by leaders

in the field of radiosurgery on clinical results for patients that have undergone surgical procedures with the CyberKnife system, although we do not yet have long-term safety and efficacy data for a significant patient population size. We cannot assure you that our products will continue to be covered and reimbursed without publication of additional data, including data supporting long-term safety and efficacy of the CyberKnife system.

We have a dedicated health policy, economics and reimbursement group, called "Patient Access". This group provides information to health care stakeholders considering coverage and reimbursement issues for the CyberKnife system, and also provides our customers with copies of relevant coverage, coding and payment policies, including those of the Medicare program, as well as published literature and clinical data supporting clinical safety and efficacy in the device.

To further support appropriate coverage and reimbursement, a group of customers has formally organized into a non-profit organization called CyberKnife Society to pursue patient access to the CyberKnife technology, with a strong emphasis on the United States.

Internationally, reimbursement and healthcare payment systems vary substantially from country to country and include single-payor, government managed systems as well as systems in which private payors and government-managed systems exist side-by-side. In addition, in many international markets, consumers of healthcare services, particularly services involving new or specialized technology, may pay out-of-pocket for such services. Our ability to achieve market acceptance or significant sales volume in international markets we enter will be dependent in large part on the availability of reimbursement for procedures performed using our products under healthcare payment systems in such markets.

**Regulatory Matters**

***Domestic Regulation***

Our products and software are medical devices subject to regulation by the FDA, as well as other regulatory bodies. FDA regulations govern the following activities that we perform and will continue to perform to ensure that medical products distributed domestically or exported internationally are safe and effective for their intended uses:

- product design and development;
- document and purchasing controls;
- production and process controls;
- acceptance controls;
- product testing;
- product manufacturing;
- product safety;
- product labeling;
- product storage;
- recordkeeping;
- complaint handling;
- pre-market clearance or approval;
- advertising and promotion; and

- product sales and distribution.

***FDA pre-market clearance and approval requirements.*** Unless an exemption applies, each medical device we wish to commercially distribute in the United States will require either prior 510(k) clearance or pre-market approval from the FDA. The FDA classifies medical devices into one of three classes. Devices deemed to pose lower risks are placed in either class I or II, which requires the manufacturer to submit to the FDA a pre-market notification requesting permission to commercially distribute the device. This process is generally known as 510(k) clearance. Some low risk devices are exempted from this requirement. Devices deemed by the FDA to pose the greatest risks, such as life-sustaining, life-supporting or implantable devices, or devices deemed not substantially equivalent to a previously cleared 510(k) device, are placed in class III, requiring pre-market approval. All of our current products are class II devices.

***510(k) clearance pathway.*** When a 510(k) clearance is required, we must submit a pre-market notification demonstrating that our proposed device is substantially equivalent to a previously cleared 510(k) device or a device that was in commercial distribution before May 28, 1976 for which the FDA has not yet called for the submission of pre-market approval applications, or PMA. By regulation, the FDA is required to clear or deny a 510(k) pre-market notification within 90 days of submission of the application. As a practical matter, clearance may take longer. The FDA may require further information, including clinical data, to make a determination regarding substantial equivalence.

In July 1999, we received 510(k) clearance for the CyberKnife system for use in the head and neck regions of the body. In August 2001, we received 510(k) clearance for the CyberKnife system to provide treatment planning and image guided stereotactic radiosurgery and precision radiotherapy for lesions, tumors and conditions anywhere in the body where radiation treatment is indicated. In April 2002, we received 510(k) clearance for the Synchrony Motion Tracking System as an option to the CyberKnife system, intended to enable dynamic image guided stereotactic radiosurgery and precision radiotherapy of lesions, tumors and conditions that move under influence of respiration.

***Pre-market approval (PMA) pathway.*** A PMA must be submitted to the FDA if the device cannot be cleared through the 510(k) process. A PMA must be supported by extensive data, including but not limited to, technical, preclinical, clinical trials, manufacturing and labeling to demonstrate to the FDA's satisfaction the safety and effectiveness of the device. No device that we have developed has required pre-market approval, nor do we currently expect that any future device or indication will require pre-market approval.

***Product modifications.*** After a device receives 510(k) clearance or a PMA, any modification that could significantly affect its safety or effectiveness, or that would constitute a significant change in its intended use, will require a new clearance or approval. We have modified aspects of our CyberKnife system family of products since receiving regulatory clearance, and we have applied for and obtained additional 510(k) clearances for these modifications when we determined such clearances were required for the modifications. The FDA requires each manufacturer to make this determination initially, but the FDA can review any such decision and can disagree with a manufacturer's determination. If the FDA disagrees with our determination not to seek a new 510(k) clearance or PMA, the FDA may retroactively require us to seek 510(k) clearance or pre-market approval. The FDA could also require us to cease marketing and distribution and/or recall the modified device until 510(k) clearance or pre-market approval is obtained. Also, in these circumstances, we may be subject to significant regulatory fines or penalties. During our fiscal year ended June 27, 2009, we submitted an additional two 510(k) clearances notifications for modifications made to the operation of the CyberKnife system. One application was cleared and one is pending clearance by the FDA.

***Pervasive and continuing regulation.*** After a device is placed on the market, numerous regulatory requirements apply. These include:

- Quality System Regulation, or QSR, which require manufacturers, including third-party manufacturers, to follow stringent design, testing, control, documentation and other quality assurance procedures during product design and throughout the manufacturing process;
- labeling regulations and FDA prohibitions against the promotion of products for uncleared, unapproved or off-label uses; and
- medical device reporting regulations, which require that manufacturers report to the FDA if their device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur.

The FDA has broad post-market and regulatory enforcement powers. We are subject to unannounced inspections by the FDA and the Food and Drug Branch of the California Department of Health Services to determine our compliance with the QSR and other regulations, and these inspections may include the manufacturing facilities of some of our subcontractors. In the past, our prior facility has been inspected, and observations were noted. In August 2008, during routine inspections performed by the FDA, one minor observation was made. We have taken corrective action on the minor observation in response to the FDA's observation. There were no observations that involved a material violation of regulatory requirements. We believe that we are in substantial compliance with the QSR. Failure to comply with applicable regulatory requirements can result in enforcement action by the FDA, which may include any of the following sanctions:

- fines, injunctions, consent decrees and civil penalties;
- recall or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- refusing our requests for 510(k) clearance or pre-market approval of new products or new intended uses;
- withdrawing 510(k) clearance or pre-market approvals that are already granted; and
- criminal prosecution.

The FDA also has the authority to require us to repair, replace or refund the cost of any medical device that we have manufactured or distributed. If any of these events were to occur, they could have a material adverse effect on our business.

***Radiological health.*** Because our CyberKnife system contains both laser and X-ray components, and because we assemble these components during manufacturing and service activities, we are also regulated under the Electronic Product Radiation Control Provisions of the Federal Food, Drug, and Cosmetic Act. This law requires laser and X-ray products to comply with regulations and applicable performance standards, and manufacturers of these products to certify in product labeling and reports to the FDA that their products comply with all such standards. The law also requires manufacturers to file new product reports, and to file annual reports and maintain manufacturing, testing and sales records, and report product defects. Various warning labels must be affixed. Assemblers of diagnostic X-ray systems are also required to certify in reports to the FDA, equipment purchasers, and where applicable, to state agencies responsible for radiation protection, that diagnostic and/or therapeutic X-ray systems they assemble meet applicable requirements. Failure to comply with these requirements could result in enforcement action by the FDA, which can include injunctions, civil penalties, and the issuance of warning letters. In the past, we failed to submit required reports to the FDA in a timely fashion. To correct our reporting deficiencies, in 2003 we initiated a corrective action plan that

included, among other things, filing all past due reports with the FDA, applicable state agencies, and customers. We have also developed and implemented procedures to ensure future reports are made in a timely manner. While we believe all past reporting deficiencies have been corrected, we cannot assure you that FDA will deem our corrective actions sufficient or that FDA will not initiate enforcement action against us.

***Fraud and Abuse Laws***

We are subject to various federal and state laws pertaining to healthcare fraud and abuse, including anti-kickback laws and physician self-referral laws. Violations of these laws are punishable by significant criminal and civil sanctions, including, in some instances, exclusion from participation in federal and state healthcare programs, including Medicare and Medicaid. Because of the far-reaching nature of these laws, there can be no assurance that we would not be required to alter one or more of our practices to be in compliance with these laws. Evolving interpretations of current laws, or the adoption of new federal or state laws or regulations could adversely affect many of the arrangements we have with customers and physicians. In addition, there can be no assurance that the occurrence of one or more violations of these laws or regulations would not result in a material adverse effect on our financial condition and results of operations.

***Anti-kickback laws.*** Our operations are subject to broad and changing federal and state anti-kickback laws. The Office of the Inspector General of the Department of Health and Human Services, or the OIG, is primarily responsible for enforcing the federal Anti-Kickback Statute and generally for identifying fraud and abuse activities affecting government programs. The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration directly or indirectly to induce either the referral of an individual, or the furnishing, recommending, or arranging of a good or service, for which payment may be made under a federal healthcare program such as Medicare and Medicaid. "Remuneration" has been broadly interpreted to include anything of value, including such items as gifts, discounts, the furnishing of supplies or equipment, credit arrangements, waiver of payments, and providing anything of value at less than fair market value.

Penalties for violating the federal Anti-Kickback Statute include criminal fines of up to $25,000 and/or imprisonment for up to five years for each violation, civil fines of up to $50,000 and possible exclusion from participation in federal healthcare programs such as Medicare and Medicaid. Many states have adopted prohibitions similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare services reimbursed by any source, not only by the Medicare and Medicaid programs, and do not include comparable exceptions.

The OIG has issued safe harbor regulations which set forth certain activities and business relationships that are deemed safe from prosecution under the federal Anti-Kickback Statute. There are safe harbors for various types of arrangements, including, without limitation, certain investment interests, leases and personal services and management contracts. The failure of a particular activity to comply in all regards with the safe harbor regulations does not mean that the activity violates the federal Anti-Kickback Statute or that prosecution will be pursued. However, conduct and business arrangements that do not fully satisfy each applicable safe harbor may result in increased scrutiny by government enforcement authorities such as the OIG.

The OIG has identified the following arrangements with purchasers and their agents as ones raising potential risk of violation of the federal Anti-Kickback Statute:

- Discount and free good arrangements that are not properly disclosed or accurately reported to federal healthcare programs;

- Product support services, including billing assistance, reimbursement consultation and other services specifically tied to support of the purchased product, offered in tandem with another service or program (such as a reimbursement guarantee) that confers a benefit to the purchaser;

- Educational grants conditioned in whole or in part on the purchase of equipment, or otherwise inappropriately influenced by sales and marketing considerations;

- Research funding arrangements, particularly post-marketing research activities, that are linked directly or indirectly to the purchase of products, or otherwise inappropriately influenced by sales and marketing considerations; and

- Other offers of remuneration to purchasers that are expressly or impliedly related to a sale or sales volume, such as "prebates" and "upfront payments," other free or reduced-price goods or services, and payments to cover costs of "converting" from a competitor's products, particularly where the selection criteria for such offers vary with the volume or value of business generated.

We have a variety of financial relationships with physicians who are in a position to generate business for us. For example, physicians own our stock who also provide medical advisory and other consulting and personal services. Similarly, we have a variety of different types of arrangements with our customers. For example, our shared ownership program entails the provision of our CyberKnife system to our customers under a deferred payment program, where we generally receive the greater of a fixed minimum payment or a portion of the service revenues. Included in the fee we charge for the shared ownership program are a variety of services, including physician training, educational and marketing support, general reimbursement guidance and technical support. In the case of our former placement program, certain services and upgrades were provided without additional charge based on procedure volume. In the past, we have also provided loans to our customers. We also provide research grants to customers to support customer studies related to, among other things, our CyberKnife systems.

If our past or present operations are found to be in violation of the federal Anti-Kickback Statute or similar government regulations to which we or our customers are subject, we or our officers may be subject to the applicable penalty associated with the violation, including significant civil and criminal penalties, damages, fines, imprisonment, and exclusion from the Medicare and Medicaid programs. The impact of any such violation may lead to curtailment or restructuring of our operations. Any penalties, damages, fines, or curtailment or restructuring of our operations could adversely affect our ability to operate our business and our financial results. The risk of our being found in violation of these laws is increased by the fact that some of these laws are open to a variety of interpretations. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business and damage our reputation. If an enforcement action were to occur, our reputation and our business and financial condition could be harmed, even if we were to prevail or settle the action. Similarly, if the physicians or other providers or entities with whom we do business are found to be non-compliant with applicable laws, they may be subject to sanctions, which could also have a negative impact on our business.

***Physician self-referral laws.*** We are also subject to federal and state physician self-referral laws. The federal Ethics in Patient Referral Act of 1989, commonly known as the Stark Law, prohibits, subject to certain exceptions, physician referrals of Medicare and Medicaid patients to an entity providing certain "designated health services" if the physician or an immediate family member has any financial relationship with the entity. The Stark Law also prohibits the entity receiving the referral from billing any good or service furnished pursuant to an unlawful referral.

In addition, in connection with the release in July 2007 of proposed Medicare reimbursement rates for calendar 2008, CMS proposed significant amendments to the regulations under the federal Ethics in

Patient Referrals Act, which is more commonly known as the Stark Law. These proposed regulations would, among other things, impose additional limitations on the ability of physicians to refer patients to medical facilities in which the physician has an ownership interest for treatment. Among other things, the regulations provide that leases of equipment between physician owners that may refer patients and hospitals must be on a fixed rate, rather than a per use basis. Physician owned entities have increasingly become involved in the acquisition of medical technologies, including the CyberKnife system. In many cases, these entities enter into arrangements with hospitals that bill Medicare for the furnishing of medical services, and the physician owners are among the physicians who refer patients to the entity for services. The regulations, as originally proposed, would limit these arrangements and could require the restructuring of existing arrangements between physicians owned entities and hospitals and may also discourage physicians from participating in the acquisition and ownership of medical technologies. In July 2008, at the time CMS published final 2008 Medicare in-patient reimbursement rates, CMS issued a final rule essentially implementing the regulations in substantially the manner originally proposed, with an effective date of October 1, 2009. Among other prohibitons, the final rule prohibits percentage-based compensation in equipment leases. As a result of the finalization of these regulations, some existing CyberKnife system operators may have to modify or restructure their corporate or organizational structures. In addition, certain existing customers that planned to open CyberKnife centers in the United States involving physician ownership could also have to restructure prior to the October 2009 effective date of the new regulations. It is possible that some of these entities may not be able to establish viable models for CyberKnife system operation and may therefore cancel their CyberKnife system purchase agreements. Accordingly, these new regulations could result in cancellations of existing CyberKnife system purchase agreements and could also reduce the attractiveness of medical technology acquisitions, including CyberKnife system purchases, by physician-owned joint ventures or similar entities. As a result, these regulations could have an adverse impact on our product sales and therefore on our business and results of operations.

A person who engages in a scheme to circumvent the Stark Law's referral prohibition may be fined up to $100,000 for each such arrangement or scheme. In addition, any person who presents or causes to be presented a claim to the Medicare or Medicaid programs in violation of the Stark Law is subject to civil monetary penalties of up to $15,000 per bill submission, an assessment of up to three times the amount claimed, and possible exclusion from federal healthcare programs such as Medicare and Medicaid. Various states have corollary laws to the Stark Law, including laws that require physicians to disclose any financial interest they may have with a healthcare provider to their patients when referring patients to that provider. Both the scope and exceptions for such laws vary from state to state.

***Federal False Claims Act.*** The federal False Claims Act prohibits the knowing filing or causing the filing of a false claim or the knowing use of false statements to obtain payment from the federal government. When an entity is determined to have violated the False Claims Act, it must pay three times the actual damages sustained by the government, plus mandatory civil penalties of between $5,500 and $11,000 for each separate false claim. Suits filed under the False Claims Act, known as "qui tam" actions, can be brought by any individual on behalf of the government and such individuals, sometimes known as "relators" or, more commonly, as "whistleblowers", may share in any amounts paid by the entity to the government in fines or settlement. In addition, certain states have enacted laws modeled after the federal False Claims Act. Qui tam actions have increased significantly in recent years, causing greater numbers of healthcare companies to have to defend a false claim action, pay fines or be excluded from Medicare, Medicaid or other federal or state healthcare programs as a result of an investigation arising out of such action. We have retained the services of a reimbursement consultant, for which we pay certain consulting fees, to provide us and facilities that have purchased a CyberKnife system or acquired a CyberKnife system through our shared ownership program, with general reimbursement advice. While we believe this will assist our customers in filing proper claims for reimbursement and such consultants do not submit claims on behalf of our customers, the fact that we

provide these consultant services could expose us to additional scrutiny and possible liability in the event one of our customers is investigated as a result of any of these laws.

***HIPAA.*** The Health Insurance Portability and Accountability Act of 1996, or HIPAA, created two new federal crimes: healthcare fraud and false statements relating to healthcare matters. The healthcare fraud statute prohibits knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private payors. A violation of this statute is a felony and may result in fines, imprisonment or exclusion from government sponsored programs. The false statements statute prohibits knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services. A violation of this statute is a felony and may result in fines or imprisonment.

***International Regulation***

International sales of medical devices are subject to foreign government regulations, which vary substantially from country to country. The time required to obtain clearance or approval by a foreign country may be longer or shorter than that required for FDA clearance or approval, and the requirements may be different.

The primary regulatory environment in Europe is that of the European Union and the three additional member states of the European Economic Area, or EEA, which have adopted similar laws and regulations with respect to medical devices. The European Union has adopted numerous directives and the European Committee for Standardization has promulgated standards regulating the design, manufacture, clinical trials, labeling and adverse event reporting for medical devices. Devices that comply with the requirements of the relevant directive will be entitled to bear CE conformity marking, indicating that the device conforms with the essential requirements of the applicable directives and, accordingly, may be commercially distributed throughout the member states of the European Economic Area.

The method of assessing conformity to applicable standards and directives depends on the type and class of the product, but normally involves a combination of self-assessment by the manufacturer and a third-party assessment by a notified body, an independent and neutral institution appointed by a European Union member state to conduct the conformity assessment. This relevant assessment may consist of an audit of the manufacturer's quality system (currently ISO 13485), provisions of the Medical Devices Directive, and specific testing of the manufacturer's device. In September 2002, our facility was awarded the ISO 13485 certification, which replaces the ISO 9001 and EN 46001 approvals, which has been subsequently maintained through periodic assessments, in accordance with the expiration dates of the standards, and we are currently authorized to affix the CE mark to our products, allowing us to sell our products throughout the European Economic Area.

We are also currently subject to regulations in Japan. A Japanese distributor received the first government approval to market the CyberKnife system from the Ministry of Health and Welfare, or MHLW, in November 1996. In December, 2003, we received approval from the MHLW to market the CyberKnife system in Japan for clinical applications in the head and neck, and a new distributor, Chiyoda Technol Corporation, was appointed to distribute the CyberKnife system. In June 2008, we received approval from the MHLW to market the CyberKnife system for treatments throughout the body where radiation treatment is indicated. On June 30, 2009, our subsidiary, Accuray Japan KK, became the Marketing Authorization Holder in Japan, which allowed the Company to directly sell our products in Japan.

We are subject to additional regulations in other foreign countries, including, but not limited to, Canada, Taiwan, China, Korea, and Russia in order to sell our products. We intend that either we or

our distributors will receive any necessary approvals or clearance prior to marketing our products in those international markets.

**State Certificate of Need Laws**

In some states, a certificate of need or similar regulatory approval is required prior to the acquisition of high-cost capital items or the provision of new services. These laws generally require appropriate state agency determination of public need and approval prior to the acquisition of such capital items or addition of new services. Certificate of need regulations may preclude our customers from acquiring the CyberKnife system, whether through purchase or our shared ownership program, and from performing stereotactic radiosurgery procedures using the CyberKnife system. Several of our prospective customers currently are involved in appeals of certificate of need determinations. If these appeals are not resolved in favor of these prospective customers, they may be precluded from purchasing and/or performing services using the CyberKnife system. Certificate of need laws are the subject of continuing legislative activity, and a significant increase in the number of states regulating the acquisition and use of the CyberKnife system through certificate of need or similar programs could adversely affect us.

**Employees**

As of June 30, 2009, we had 458 employees worldwide, including 123 in research and development, 100 in sales and marketing, 106 in installation and service, 30 in manufacturing, and 99 in administration. None of the employees is represented by a labor union or is covered by a collective bargaining agreement. We have never experienced any employment-related work stoppages and we believe our relationship with our employees is good.

**Available Information**

Our web site is located at *www.accuray.com.* We make available on this web site, free of charge, copies of our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and our proxy statements as soon as reasonably practicable after filing such material electronically or otherwise furnishing it to the Securities and Exchange Commission. The contents of our web site are not intended to be incorporated by reference into this report or in any other report or document we file or furnish, and any references to our web site are intended to be textual references only.

## Item 1A. RISK FACTORS

**Risks Related to Our Business**

***If the CyberKnife system does not achieve widespread market acceptance, we will not be able to generate the revenue necessary to support our business.***

Achieving physician, patient, hospital administrator and third-party payor acceptance of the CyberKnife system as a preferred method of tumor treatment will be crucial to our continued success. Physicians will not begin to use or increase the use of the CyberKnife system unless they determine, based on experience, clinical data and other factors, that the CyberKnife system is a safe and effective alternative to current treatment methods. The CyberKnife system was initially used primarily for the treatment of tumors in the brain, and the broader use of the system to treat tumors elsewhere in the body has been a more recent development. As a result, physician and patient acceptance of the CyberKnife system as a comprehensive tool for treatment of solid tumor cancers anywhere in the body has not yet been fully demonstrated, particularly as compared to products, systems or technologies that have longer histories in the marketplace. The CyberKnife system is a major capital purchase and purchase decisions are greatly influenced by hospital administrators who are subject to increasing

pressures to reduce costs. These and other factors may affect the rate and level of the CyberKnife system's market acceptance, including:

- the CyberKnife system's price relative to other products or competing treatments;
- effectiveness of our sales and marketing efforts;
- the impact of the current economic environment on our business, including the postponement by our customers of purchase decisions or required build-outs;
- capital equipment budgets of healthcare institutions;
- perception by physicians and other members of the healthcare community of the CyberKnife system's safety, efficacy and benefits compared to competing technologies or treatments;
- publication in peer-reviewed medical journals of data regarding the successful use and longer term clinical benefits of the CyberKnife system;
- willingness of physicians to adopt new techniques and the ability of physicians to acquire the skills necessary to operate the CyberKnife system;
- extent of third-party coverage and reimbursement for procedures using the CyberKnife system;
- development of new products and technologies by our competitors or new treatment alternatives;
- regulatory developments related to manufacturing, marketing and selling the CyberKnife system both within and outside the United States;
- perceived liability risks arising from the use of new products; and
- unfavorable publicity concerning the CyberKnife system or radiation-based treatment alternatives.

If the CyberKnife system is unable to achieve or maintain market acceptance, our business would be harmed.

***We have a large accumulated deficit, may expect future losses and may be unable to maintain profitability.***

We have incurred net losses in every fiscal year since our inception except during the fiscal years ended June 30, 2009 and 2008. As of June 30, 2009, we had an accumulated deficit of $120.5 million. We may incur net losses in the future, particularly as we increase our manufacturing, sales and marketing and administrative activities and as we continue our research and development activities. Our ability to maintain long-term profitability is largely dependent on our ability to successfully market and sell the CyberKnife system and to control our costs and effectively manage our growth. We cannot assure you that we will be able to maintain profitability. In the event we fail to maintain profitability, our stock price could decline.

***We face risks related to the current global economic environment, which could delay or prevent our customers from obtaining financing to purchase the CyberKnife system and implement the required facilities, which would adversely affect our business, financial condition and results of operations.***

Current uncertainty in global economic conditions resulting from the recent disruption in credit markets poses a risk to the overall economy that could impact consumer and customer demand for our products, as well as our ability to manage normal commercial relationships with our customers, suppliers and creditors, including financial institutions. If the current situation deteriorates significantly, our business could be negatively impacted, including such areas as reduced demand for our products resulting from a slow-down in the general economy, supplier or customer disruptions resulting from tighter credit markets and/or temporary interruptions in our ability to conduct day-to-day transactions through our financial intermediaries involving the payment to or collection of funds from our customers, vendors and suppliers.

In addition, due to the recent tightening of credit markets and concerns regarding the availability of credit, particularly in the United States, some of our customers have been delayed in obtaining, or have not be able to obtain, necessary financing for their purchases of the CyberKnife system or for the construction or renovation of facilities to house CyberKnife systems. To date, these delays have primarily affected customers that were planning to operate free-standing CyberKnife systems, rather than hospital-based customers. These delays have in some instances led to our customers postponing the shipment and installation of previously ordered systems or cancelling their system orders and may cause other customers to postpone their system installation or to cancel their agreements with us. An increase in delays and order cancellations of this nature would adversely affect our product sales and revenues, and therefore harm our business and results of operations.

***The high unit price of the CyberKnife system, as well as other factors may contribute to substantial fluctuations in our operating results.***

Because of the high unit price of the CyberKnife system, and the relatively small number of units installed each quarter, each installation of a CyberKnife system can represent a significant component of our revenue for a particular quarter. Therefore, if we do not install a CyberKnife system when anticipated, our operating results will vary significantly. This is of particular concern in the current volatile economic environment, where we have had experiences with customers cancelling or postponing orders for our CyberKnife system and delaying the required build-outs. These fluctuations and other potential fluctuations mean that you should not rely upon our operating results in any particular period as an indication of future performance. In particular, factors which may contribute to these fluctuations may include:

- timing of when we are able to recognize revenue associated with sales of the CyberKnife system, which varies depending upon the terms of the applicable sales and service contracts;
- the proportion of revenue attributable to purchases of the CyberKnife system, our shared ownership program and installations associated with our legacy service plans;
- timing and level of expenditures associated with new product development activities;
- regulatory requirements in some states for a certificate of need prior to the installation of a radiation device;
- delays in shipment due, for example, to unanticipated construction delays at customer locations where our products are to be installed, cancellations by customers, natural disasters or labor disturbances;
- delays in our manufacturing processes or unexpected manufacturing difficulties;
- timing of the announcement, introduction and delivery of new products or product upgrades by us and by our competitors;
- timing and level of expenditures associated with expansion of sales and marketing activities such as trade shows and our overall operations;
- disruptions in the supply or changes in the costs of raw materials, labor, product components or transportation services; and
- changes in third party coverage and reimbursement, changes in government regulation, or a change in a customer's financial condition or ability to obtain financing.

These factors are difficult to forecast and may contribute to substantial fluctuations in our quarterly revenues and substantial variation from our projections, particularly during the periods in which our sales volume is low. These fluctuations may cause volatility in our stock price.

***We experience a long and variable sales and installation cycle, which may result in inconsistent quarterly results.***

The CyberKnife system has a lengthy sales and purchase order cycle because it is a major capital equipment item and requires the approval of senior management at purchasing institutions. The sales process in the United States typically begins with pre-selling activity followed by sales presentations and other sales-related activities. After the customer has expressed an intention to purchase a CyberKnife system, we negotiate and enter into a definitive purchase contract with the customer. This may take the form of a terms agreement setting forth the business and economic terms of the transaction. Typically, following the execution of the contract, the customer begins the building or renovation of a facility to house the CyberKnife system, which together with the subsequent installation of the CyberKnife system, can take up to 24 months to complete. During the period prior to installation, the customer must build a radiation-shielded facility to house its CyberKnife system. In order to construct this facility, the customer must typically obtain radiation device installation permits, which are granted by state and local government bodies, each of which may have different criteria for permit issuance. If a permit were denied for installation at a specific hospital or treatment center, our CyberKnife system could not be installed at that location. In addition, some of our customers are cancer centers or facilities that are new, and in these cases it may be necessary for the entire facility to be completed before the CyberKnife system can be installed, which can result in additional construction and installation delays.

Under our revenue recognition policy, we generally do not recognize revenue attributable to a CyberKnife system purchase until after installation has occurred. For international sales through distributors, we typically recognize revenue when the system is sold through to the end user. Therefore the long sales cycle together with the timing of CyberKnife system shipments and installations may result in significant fluctuations in our reporting of quarterly revenues. Under our current forms of purchase and service contracts, we receive a majority of the purchase price for the CyberKnife system upon installation of the system. Events beyond our control may delay installation and the satisfaction of contingencies required to receive cash inflows and recognize revenue, such as:

- procurement delay;
- customer funding or financing delay;
- delay in or unforeseen difficulties related to customers organizing legal entities and obtaining financing for CyberKnife system acquisition;
- construction delay;
- delay pending customer receipt of a building or radiation device installation permit; and
- delay caused by weather or natural disaster.

In the event that a customer does not, for any of the reasons above or other reasons proceed with installation of the system after entering into a purchase contract, we would only recognize up to the deposit portion of the purchase price as revenue, unless the deposit was refunded to the customer. Therefore, delays in the installation of CyberKnife systems or customer cancellations would adversely affect our cash flows and revenue, which would harm our results of operations.

***If third-party payors do not provide sufficient coverage and reimbursement to healthcare providers for use of the CyberKnife system, our revenue would be adversely affected.***

Our customers rely significantly on reimbursement for CyberKnife procedures. Our ability to commercialize our products successfully will depend in significant part on the extent to which public and private third-party payors provide appropriate coverage and reimbursement for our products and related procedures. If reimbursement policies or other cost containment measures are instituted in a manner that significantly reduces the coverage for or payment of our products, our existing customers

may not continue using our product or may decrease their use of our product, and we may have difficulty obtaining new customers. Such actions would likely have a material adverse effect on our operating results.

***Our industry is subject to intense competition and rapid technological change, which may result in products or new tumor treatments that are superior to the CyberKnife system. If we are unable to anticipate or keep pace with changes in the marketplace and the direction of technological innovation and customer demands, our products may become less useful or obsolete and our operating results will suffer.***

The medical device industry in general and the non-invasive cancer treatment field in particular are subject to intense and increasing competition and rapidly evolving technologies. Because our products often have long development and government approval cycles, we must anticipate changes in the marketplace and the direction of technological innovation and customer demands. To compete successfully, we will need to continue to demonstrate the advantages of our products and technologies over well-established alternative procedures, products and technologies, and convince physicians and other healthcare decision makers of the advantages of our products and technologies. Traditional surgery and other forms of minimally invasive procedures, chemotherapy or other drugs remain alternatives to the CyberKnife system. Also, we compete directly with traditional radiosurgery systems primarily from Elekta AB (publ), or Elekta, BrainLAB AG, the Integra Radionics business of Integra LifeSciences Holdings Corporation, or Radionics, and Varian Medical Systems, Inc., or Varian.

The market for standard linear accelerators is dominated by three companies: Elekta, Siemens AG and Varian. In addition, TomoTherapy Incorporated markets and sells a radiation therapy product. The CyberKnife system is not typically used to perform traditional radiation therapy and therefore does not usually compete directly with standard medical linacs that perform standard radiation therapy. However, some manufacturers of standard linac based radiation therapy systems, including Varian and Elekta, have products that can be used in combination with body and/or head frames and image- guidance systems to perform radiosurgery. In addition, many government, academic and business entities are investing substantial resources in research and development of cancer treatments, including surgical approaches, radiation treatment, drug treatment, gene therapy, which is the treatment of disease by replacing, manipulating, or supplementing nonfunctional genes, and other approaches. Moreover, at least one other company has announced that it is developing a product that would be directly competitive with the CyberKnife. Successful developments that result in new approaches for the treatment of cancer could reduce the attractiveness of our products or render them obsolete.

Our future success will depend in large part on our ability to establish and maintain a competitive position in current and future technologies. Rapid technological development may render the CyberKnife system and its technologies obsolete. Many of our competitors have or may have greater corporate, financial, operational, sales and marketing resources, and more experience in research and development than we have. We cannot assure you that our competitors will not succeed in developing or marketing technologies or products that are more effective or commercially attractive than our products or that would render our technologies and products obsolete. We may not have the financial resources, technical expertise, marketing, distribution or support capabilities to compete successfully in the future. Our success will depend in large part on our ability to maintain a competitive position with our technologies.

Our competitive position also depends on:

- widespread awareness, acceptance and adoption by the radiation oncology and cancer therapy markets of our products;
- the discovery of new technologies that improve the effectiveness and productivity of the CyberKnife system radiosurgery process;
- product coverage and reimbursement from third-party payors, insurance companies and others;

- properly identifying customer needs and delivering new products or product enhancements to address those needs;
- published studies supporting the efficacy and safety and long-term clinical benefit of the CyberKnife system;
- limiting the time required from proof of feasibility to routine production;
- limiting the timing and cost of regulatory approvals;
- our ability to attract and retain qualified personnel;
- the extent of our patent protection or our ability to otherwise develop proprietary products and processes;
- securing sufficient capital resources to expand both our continued research and development, and sales and marketing efforts; and
- obtaining any necessary United States or foreign marketing approvals or clearances.

If the CyberKnife system is not competitive based on these or other factors, our business would be harmed.

***If we fail to maintain an effective system of internal control over financial reporting, we may not be able to accurately report our financial results. As a result, current and potential stockholders could lose confidence in our financial reporting, which could have an adverse effect on our business and our stock price.***

Effective internal controls are necessary for us to provide reliable financial reports and to protect from fraudulent, illegal or unauthorized transactions. If we cannot provide effective controls and reliable financial reports, our business and operating results could be harmed. Our management determined, as of June 30, 2008 and September 30, 2008, that we had material weaknesses in our internal control over financial reporting and that our disclosure controls and procedures were not effective. We began our remediation efforts in the first half of the fiscal year 2009 and management continued to evaluate the effectiveness of our internal controls over financial reporting through June 30, 2009. We concluded that there were no deficiencies in our internal control over financial reporting that would constitute a material weakness as of that date. Although we are making additional improvements in our internal controls over financial reporting, in future periods we may conclude that we have one or more material weaknesses, and remedying these material weaknesses may require significant additional financial and managerial resources and could result in a loss of investor confidence in our internal controls and financial reporting.

***We may have difficulties in determining the effectiveness of our internal control due to our complex financial model.***

The complexity of our financial model contributes to our need for effective financial reporting systems and internal controls. We recognize revenue from a range of transactions including CyberKnife system sales, our shared ownership program and services. The CyberKnife system is a complex product that contains both hardware and software elements. Since the software component is significant in our solution, we are bound by the software revenue recognition rules for our business. The complexity of the CyberKnife system and of our financial model pertaining to revenue recognition requires us to process a broader range of financial transactions than would be required by a company with a less complex financial model. Accordingly, deficiencies or weaknesses in our internal controls would likely impact us more significantly than they would impact a company with a less complex financial model. If we were to find that our internal controls were deficient, we could be required to amend or restate our historical financial statements, which would likely have a negative impact on our stock price.

***Our reliance on single source suppliers for critical components of the CyberKnife system could harm our ability to meet demand for our products in a timely and cost effective manner.***

We currently depend on single source suppliers for some of the critical components necessary for the assembly of the CyberKnife system, including the robotic manipulator, imaging plates, treatment table, robotic couch and magnetron, which creates the microwaves for use in the linear accelerator. If any single source suppliers were to cease delivering components to us or fail to provide the components on a timely basis, we might be required to qualify an alternate supplier and we would likely experience a lengthy delay in our manufacturing processes or a cessation in production, which would result in delays of shipment to end users. We cannot assure you that our single source suppliers will be able or willing to meet our future demands.

We generally do not maintain large volumes of inventory. Furthermore, if we are required to change the manufacturer of a critical component of the CyberKnife system, we will be required to verify that the new manufacturer maintains facilities, procedures and operations that comply with our quality and applicable regulatory requirements. We also will be required to assess the new manufacturer's compliance with all applicable regulations and guidelines, which could further impede our ability to manufacture our products in a timely manner. If the change in manufacturer results in a significant change to the product, a new 510(k) clearance would be necessary, which would likely cause substantial delays. The disruption or termination of the supply of key components for the CyberKnife system could harm our ability to generate revenue, lead to customer dissatisfaction and damage our reputation.

***It is difficult and costly to protect our intellectual property and our proprietary technologies, and we may not be able to ensure their protection.***

Our success depends significantly on our ability to obtain, maintain and protect our proprietary rights to the technologies used in our products. Patents and other proprietary rights provide uncertain protections, and we may be unable to protect our intellectual property. For example, we may be unsuccessful in defending our patents and other proprietary rights against third party challenges.

In addition to patents, we rely on a combination of trade secrets, copyright and trademark laws, nondisclosure agreements and other contractual provisions and technical security measures to protect our intellectual property rights. These measures may not be adequate to safeguard the technology underlying our products. If these measures do not protect our rights adequately, third parties could use our technology, and our ability to compete in the market would be reduced. Although we have attempted to obtain patent coverage for our technology where available and appropriate, there are aspects of the technology for which patent coverage was never sought or never received. There are also countries in which we sell or intend to sell the CyberKnife system but have no patents or pending patent applications. Our ability to prevent others from making or selling duplicate or similar technologies will be impaired in those countries in which we have no patent protection. Although we have several issued patents in the United States and in foreign countries protecting aspects of the CyberKnife system, our pending United States and foreign patent applications may not issue, may issue only with limited coverage or may issue and be subsequently successfully challenged by others and held invalid or unenforceable.

Similarly, our issued patents and those of our licensors may not provide us with any competitive advantages. Competitors may be able to design around our patents or develop products which provide outcomes comparable or superior to ours. Our patents may be held invalid or unenforceable as a result of legal challenges by third parties, and others may challenge the inventorship or ownership of our patents and pending patent applications. In addition, the laws of some foreign countries may not protect our intellectual property rights to the same extent as do the laws of the United States. In the event a competitor infringes upon our patent or other intellectual property rights, enforcing those rights may be difficult and time consuming. Even if successful, litigation to enforce our intellectual property

rights or to defend our patents against challenge could be expensive and time consuming and could divert our management's attention. We may not have sufficient resources to enforce our intellectual property rights or to defend our patents against a challenge.

We also license patent and other proprietary rights to aspects of our technology to third parties in fields where we currently do not operate as well as in fields where we currently do operate. Disputes with our licensees may arise regarding the scope and content of these licenses. Further, our ability to expand into additional fields with our technologies may be restricted by our existing licenses or licenses we may grant to third parties in the future.

In October 2006, January 2007 and February 2007, we received correspondence from American Science and Engineering, Inc., or AS&E, expressing concerns that we may be using certain intellectual property we acquired from AS&E through the HES acquisition in a manner that breaches, or may breach, our contractual obligations under a license agreement with them in certain non-medical fields. We have had limited discussions with AS&E regarding their allegations but as of June 30, 2009, we have not received any further written correspondence from AS&E regarding this issue. The intellectual property at issue relates to the development of a next-generation linac that could be used for medical as well as non-medical purposes. We are developing the technology used in the next-generation linac independently from the intellectual property we obtained from the HES acquisition. While we do not believe our activities breach or violate the terms of the license agreement, we cannot assure you that AS&E will not commence litigation on the grounds that we are in breach of our obligations under the license agreement.

The policies we have in place to protect our trade secrets may not be effective in preventing misappropriation of our trade secrets by others. In addition, confidentiality agreements executed by our employees, consultants and advisors may not be enforceable or may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure. Litigating a trade secret claim is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge methods and know-how. If we are unable to protect our intellectual property rights, we may be unable to prevent competitors from using our own inventions and intellectual property to compete against us, and our business may be harmed.

***Because the medical device industry is characterized by competing intellectual property, we may be sued for violating the intellectual property rights of others.***

The medical device industry is characterized by a substantial amount of litigation over patent and other intellectual property rights. In particular, the field of radiation treatment of cancer is well established and crowded with the intellectual property of competitors and others. We also expect that other participants will enter the field—in particular, at least one other company has announced that it is developing a product that would be directly competitive with the CyberKnife. A number of companies in our market, as well as universities and research institutions, have issued patents and have filed patent applications which relate to the use of stereotactic radiosurgery to treat solid cancerous and benign tumors.

Determining whether a product infringes a patent involves complex legal and factual issues, and the outcome of patent litigation actions is often uncertain. We have not conducted an extensive search of patents issued to third parties, and no assurance can be given that third party patents containing claims covering our products, parts of our products, technology or methods do not exist, have not been filed, or could not be filed or issued. Because of the number of patents issued and patent applications filed in our technical areas or fields, our competitors or other third parties may assert that our products and the methods we employ in the use of our products are covered by United States or foreign patents held by them. In addition, because patent applications can take many years to issue and because publication schedules for pending applications vary by jurisdiction, there may be applications now

pending of which we are unaware, and which may result in issued patents which our current or future products infringe. Also, because the claims of published patent applications can change between publication and patent grant, there may be published patent applications that may ultimately issue with claims that we infringe. There could also be existing patents that one or more of our products or parts may infringe and of which we are unaware. As the number of competitors in the market for less invasive cancer treatment alternatives grows, and as the number of patents issued in this area grows, the possibility of patent infringement claims against us increases. Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

In the event that we become subject to a patent infringement or other intellectual property lawsuit and if the relevant patents or other intellectual property were upheld as valid and enforceable and we were found to infringe or violate the terms of a license to which we are a party, we could be prevented from selling our products unless we could obtain a license or were able to redesign the product to avoid infringement. If we were unable to obtain a license or successfully redesign our system, we might be prevented from selling our system. If there is an allegation or determination that we have infringed the intellectual property rights of a competitor or other person, we may be required to pay damages, or a settlement or ongoing royalties. In these circumstances, we may be unable to sell our products at competitive prices or at all, our business and operating results could be harmed.

***We could become subject to product liability claims, product recalls, other field actions and warranty claims that could be expensive, divert management's attention and harm our business.***

Our business exposes us to potential liability risks that are inherent in the manufacturing, marketing and sale of medical device products. We may be held liable if the CyberKnife system causes injury or death or is found otherwise unsuitable during usage. Our products incorporate sophisticated components and computer software. Complex software can contain errors, particularly when first introduced. In addition, new products or enhancements may contain undetected errors or performance problems that, despite testing, are discovered only after installation. Because our products are designed to be used to perform complex surgical procedures, defects could result in a number of complications, some of which could be serious and could harm or kill patients. It is also possible that defects in the design, manufacture or labeling of our products might necessitate a product recall or other field corrective action, which may result in warranty claims beyond our expectations and may harm our reputation. A product liability claim, regardless of its merit or eventual outcome, could result in significant legal defense costs. The coverage limits of our insurance policies may not be adequate to cover future claims. If sales of our products increase or we suffer future product liability claims, we may be unable to maintain product liability insurance in the future at satisfactory rates or with adequate amounts. A product liability claim, any product recalls or other field actions or excessive warranty claims, whether arising from defects in design or manufacture or otherwise, could negatively affect our sales or require a change in the design, manufacturing process or the indications for which the CyberKnife system may be used, any of which could harm our reputation and business, result in a decline in revenue.

In addition, if a product we designed or manufactured is defective, whether due to design or manufacturing defects, improper use of the product or other reasons, we may be required to notify regulatory authorities and/or to recall the product, possibly at our expense. We have voluntarily conducted recalls and product corrections in the past. In 2002, we were subject to a product recall in Japan, as a result of a failure of our prior distributor to coordinate product modifications and obtain necessary regulatory approvals in a timely manner. In April 2007, we initiated a product correction at twenty different sites related to a software malfunction of the CyberKnife system. As a result of this software malfunction, we provided affected devices with software upgrades designed to correct the

problems that have been identified. We have notified the FDA regarding these software upgrades and corrections. We cannot ensure that the FDA will not require that we take additional actions to address the software malfunctions. A required notification to a regulatory authority or recall could result in an investigation by regulatory authorities of our products, which could in turn result in required recalls, restrictions on the sale of the products or other civil or criminal penalties. The adverse publicity resulting from any of these actions could cause customers to review and potentially terminate their relationships with us. These investigations or recalls, especially if accompanied by unfavorable publicity or termination of customer contracts, could result in our incurring substantial costs, losing revenues and damaging our reputation, each of which would harm our business.

***The safety and efficacy of our products for certain uses is not yet supported by long-term clinical data and may therefore prove to be less safe and effective than initially thought.***

Although we believe that the CyberKnife system has advantages over competing products and technologies, we do not have sufficient clinical data demonstrating these advantages for all tumor indications. For example, because our CyberKnife procedures are relatively new, we have limited clinical data relating to the effectiveness of the CyberKnife system as a means of controlling the growth of cancer at a particular body site. In addition, we have only limited five-year patient survival rate data, which is a common long-term measure of clinical effectiveness in cancer treatment. Further, future patient studies or clinical experience may indicate that treatment with the CyberKnife system does not improve patient outcomes. Such results could slow the adoption of our products by physicians, significantly reduce our ability to achieve expected revenues and could prevent us from becoming profitable. In addition, if future results and experience indicate that our products cause unexpected or serious complications or other unforeseen negative effects, the FDA could rescind our clearances, our reputation with physicians, patients and others may suffer and we could be subject to significant legal liability.

***The CyberKnife system has been in use for a limited period of time for uses outside the brain and the medical community has not yet developed a large quantity of peer-reviewed literature that supports safe and effective use in those locations in the body.***

The CyberKnife system was initially cleared by a number of regulatory authorities for the treatment of tumors in the brain and neck. More recently, the CyberKnife system has been cleared in the United States to treat tumors anywhere in the body where radiation is indicated, and our future growth is dependent in large part on continued growth in full body use of the system. Currently, however, there are a limited number of peer-reviewed medical journal publications regarding the safety and efficacy of the CyberKnife system for treatment of tumors outside the brain or spine. If later studies show that the CyberKnife system is less effective or less safe with respect to particular types of solid tumors, or in the event clinical studies do not achieve the results anticipated at the outset of the study, use of the CyberKnife system could fail to increase or could decrease and our growth and operating results would therefore be harmed.

***International sales of the CyberKnife system account for a significant portion of our revenue, which exposes us to risks inherent in international operations.***

Our international sales have increased year-over-year for each of the past three fiscal years. We anticipate that a significant portion of our revenue will continue to be derived from sales of the CyberKnife system in foreign markets and that the percentage of our overall revenue that is derived from these markets will continue to increase. This revenue and related operations will therefore continue to be subject to the risks associated with international operations, including:

- economic or political instability;
- shipping delays;

- changes in foreign regulatory laws governing sales of medical devices;
- difficulties in enforcing agreements with and collecting receivables from customers outside the United States;
- longer payment cycles associated with many customers outside the United States;
- adequate reimbursement for the CyberKnife procedure outside the United States;
- failure of local laws to provide the same degree of protection against infringement of our intellectual property;
- protectionist laws and business practices that favor local competitors;
- risks relating to foreign currency; and
- contractual provisions governed by foreign laws and various trade restrictions, including U.S. prohibitions and restrictions on exports of certain products and technologies to certain nations.

Our international operations are also subject to United States laws regarding the conduct of business overseas by U.S. companies. In particular, the U.S. Foreign Corrupt Practices Act, or FCPA, prohibits the provision of illegal or improper inducements to foreign government officials in connection with the obtaining of business overseas. Violations of the FCPA by us or any of our employees or executive officers could subject us or the individuals involved to criminal or civil liability and could therefore materially harm our business.

In addition, future imposition of, or significant increases in, the level of customs duties, export quotas, regulatory restrictions or trade restrictions could materially harm our business. Currently, the majority of our international sales are denominated in U.S. dollars. As a result, an increase in the value of the U.S. dollar relative to foreign currencies could require us to reduce our sales price or make our products less competitive in international markets. Also, as our international sales increase, we may enter into a greater number of transactions denominated in non-U.S. dollars, which would expose us to foreign currency risks, including changes in currency exchange rates. If we are unable to address these risks and challenges effectively, our international operations may not be successful and our business would be materially harmed.

***We depend on third-party distributors to market and distribute the CyberKnife system in international markets. If our distributors fail to successfully market and distribute the CyberKnife system, our business will be materially harmed.***

We depend on a limited number of distributors in our international markets. These international distribution relationships are exclusive by geographic region. We cannot control the efforts and resources our third-party distributors will devote to marketing the CyberKnife system. Our distributors may not be able to successfully market and sell the CyberKnife system, may not devote sufficient time and resources to support the marketing and selling efforts and may not market the CyberKnife system at prices that will permit the product to develop, achieve or sustain market acceptance. If we or our distributors terminate our existing agreements, finding new distributors could be an expensive and time-consuming process and sales could decrease during and after any transition period. If we are unable to attract additional international distributors, our international revenue may not grow. If our distributors experience difficulties, do not actively market the CyberKnife system or do not otherwise perform under our distribution agreements, our potential for revenue from international markets may be dramatically reduced, and our business could be harmed.

***We have limited experience and capability in manufacturing and may encounter manufacturing problems or delays that could result in lost revenue.***

The CyberKnife system is complex, and requires the integration of a number of components from several sources of supply. We must manufacture and assemble these complex systems in commercial quantities in compliance with regulatory requirements and at an acceptable cost. We have a limited history of manufacturing commercial quantities of the CyberKnife system. In particular, we manufacture compact linacs as a component of the CyberKnife system. Our linac components are extremely complex devices and require significant expertise to manufacture, and as a result of our limited manufacturing experience we may have difficulty producing needed materials in a commercially viable manner. We may encounter difficulties in scaling up production of the CyberKnife system, including problems with quality control and assurance, component supply shortages, increased costs, shortages of qualified personnel and/or difficulties associated with compliance with local, state, federal and foreign regulatory requirements. If our manufacturing capacity does not keep pace with product demand, we will not be able to fulfill orders in a timely manner which in turn may have a negative effect on our financial results and overall business. Conversely, if demand for our products decreases, the fixed costs associated with excess manufacturing capacity may adversely affect our financial results.

Our manufacturing processes and the manufacturing processes of our third-party suppliers are required to comply with the FDA's Quality System Regulation, or QSR. The QSR is a complex regulatory scheme that covers the methods and documentation of the design, testing, production processes, controls, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products. We are also subject to state requirements and licenses applicable to manufacturers of medical devices. Because our manufacturing processes include diagnostic and therapeutic X-ray equipment and laser equipment, we are subject to the electronic product radiation control provisions of the Federal Food, Drug and Cosmetic Act, which requires that we file reports with the FDA, applicable states and our customers regarding the distribution, manufacturing and installation of these types of equipment. The FDA enforces the QSR and the electronic product radiation control provisions through periodic unannounced inspections. We have been, and anticipate in the future to be, subject to such inspections. Our failure or the failure of a third-party supplier to pass a QSR inspection or to comply with these and other applicable regulatory requirements could result in disruption of our operations and manufacturing delays. Our failure to take prompt and satisfactory corrective action in response to an adverse inspection or our failure to comply with applicable standards could result in enforcement actions, including a public warning letter, a shutdown of our manufacturing operations, a recall of our products, civil or criminal penalties, or other sanctions, which would cause our sales and business to suffer. We cannot assure you that the FDA or other governmental authorities would agree with our interpretation of applicable regulatory requirements or that we or our third-party suppliers have in all instances fully complied with all applicable requirements.

If we cannot achieve the required level and quality of production, we may need to outsource production or rely on licensing and other arrangements with third parties who possess sufficient manufacturing facilities and capabilities in compliance with regulatory requirements. Even if we could outsource needed production or enter into licensing or other third party arrangements, this could reduce our gross margin and expose us to the risks inherent in relying on others. We also cannot assure you that our suppliers will deliver an adequate supply of required components on a timely basis or that they will adequately comply with the QSR. Failure to obtain these components on a timely basis would disrupt our manufacturing processes and increase our costs, which would harm our operating results.

***We depend on key employees, the loss of whom would adversely affect our business. If we fail to attract and retain employees with the expertise required for our business, we may be unable to continue to grow our business.***

We are highly dependent on the members of our senior management, operations and research and development staff. Our future success will depend in part on our ability to retain these key employees and to identify, hire and retain additional personnel. Competition for qualified personnel in the medical device industry, particularly in northern California, is intense, and finding and retaining qualified personnel with experience in our industry is very difficult. We believe there are only a limited number of individuals with the requisite skills to serve in many of our key positions and we compete for key personnel with other medical equipment and software manufacturers and technology companies, as well as universities and research institutions. It is increasingly difficult to hire and retain these persons, and we may be unable to replace key persons if they leave or fill new positions requiring key persons with appropriate experience. A significant portion of our compensation to our key employees is in the form of stock option grants. A prolonged depression in our stock price could make it difficult for us to retain our employees and recruit additional qualified personnel. We do not maintain, and do not currently intend to obtain, key employee life insurance on any of our personnel. If we fail to hire and retain personnel in key positions, we may be unable to continue to grow our business successfully.

***If we do not effectively manage our growth, our business may be significantly harmed.***

The number of our employees increased from 194 as of June 30, 2005 to 458 as of June 30, 2009. In order to implement our business strategy, we expect continued growth in our employee and infrastructure requirements, particularly as we expand our manufacturing and sales and marketing capacities. To manage our growth, we must expand our facilities, augment our management, operational and financial systems, hire and train additional qualified personnel, scale-up our manufacturing capacity and expand our marketing and distribution capabilities. Our manufacturing, assembly and installation process is complex and occurs over many months, and we must effectively scale this entire process to satisfy customer expectations and changes in demand. We also expect to increase the number of sales and marketing personnel as we expand our business. Further, to accommodate our growth and compete effectively, we will be required to improve our information systems. We cannot be certain that our personnel, systems, procedures and internal controls will be adequate to support our future operations. If we cannot manage our growth effectively, our business will suffer.

***Any failure in our physician training efforts could result in lower than expected product sales and potential liabilities.***

A critical component of our sales and marketing efforts is the training of a sufficient number of physicians to properly utilize the CyberKnife system. We rely on physicians to devote adequate time to learn to use our products. If physicians are not properly trained, they may misuse or ineffectively use our products. This may result in unsatisfactory patient outcomes, patient injury and related liability or negative publicity which could have an adverse effect on our product sales.

***As a result of being a public company, we are incurring increased costs.***

As a newly public company, we have incurred and will continue to incur increased legal, accounting and other expenses that we did not incur as a private company as we are now subject to Securities and Exchange Commission, or SEC, NASDAQ Stock Market and other rules focusing on corporate governance and financial reporting. In particular, we were first required to comply with Section 404 of the Sarbanes-Oxley Act regarding management assessment of internal controls during our 2008 fiscal year and we will be required to do so in future years. As a result, we expect to continue to incur substantial fees and costs for future audits. We also expect these rules and regulations to make

it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified persons to serve on our board of directors or as executive officers. We continue to monitor developments with respect to these requirements, but we cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

***Our ability to raise capital in the future may be limited, and our failure to raise capital when needed could prevent us from executing our growth strategy.***

While we believe that our existing cash and short-term and long-term investments will be sufficient to meet our anticipated cash needs for at least the next 12 months, the timing and amount of our working capital and capital expenditure requirements may vary significantly depending on numerous factors, including:

- market acceptance of our products;
- the need to adapt to changing technologies and technical requirements;
- the existence of opportunities for expansion; and
- access to and availability of sufficient management, technical, marketing and financial personnel.

If our capital resources are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity securities or debt securities or obtain other debt financing, which could be difficult or impossible in the current economic and capital markets environments. The sale of additional equity securities or convertible debt securities would result in additional dilution to our stockholders. Additional debt would result in increased expenses and could result in covenants that would restrict our operations. We have not made arrangements to obtain additional financing, and we cannot assure you that financing, if required, will be available in amounts or on terms acceptable to use, if at all.

***We may attempt to acquire new businesses, products or technologies, and if we are unable to successfully complete these acquisitions or to integrate acquired businesses, products, technologies or employees, we may fail to realize expected benefits or harm our existing business.***

Our success will depend, in part, on our ability to expand our product offerings and grow our business in response to changing technologies, customer demands and competitive pressures. In some circumstances, we may determine to do so through the acquisition of complementary businesses, products or technologies rather than through internal development. The identification of suitable acquisition candidates can be difficult, time consuming and costly, and we may not be able to successfully complete identified acquisitions. Furthermore, even if we successfully complete an acquisition, we may not be able to successfully integrate newly acquired organizations, products or technologies into our operations, and the process of integration could be expensive, time consuming and may strain our resources. In addition, we may be unable to retain employees of acquired companies, or retain the acquired company's customers, suppliers, distributors or other partners who are our competitors or who have close relationships with our competitors. Consequently, we may not achieve anticipated benefits of the acquisitions which could harm our existing business. In addition, future acquisitions could result in potentially dilutive issuances of equity securities or the incurrence of debt, contingent liabilities or expenses, or other charges such as in-process research and development, any of which could harm our business and affect our financial results or cause a reduction in the price of our common stock.

***Our liquidity could be adversely impacted by adverse conditions in the financial markets.***

At June 30, 2009 we had cash and cash equivalents of $36.8 million. These available cash and cash equivalents are held in accounts managed by third party financial institutions and consist of invested cash and cash in our operating accounts. The invested cash is invested in interest bearing funds managed by third party financial institutions. These funds invest in direct obligations of the government of the United States. To date we have experienced no loss or lack of access to our invested cash or cash equivalents; however, we can provide no assurances that access to our invested cash and cash equivalents will not be impacted by adverse conditions in the financial markets.

At any point in time we also have funds in our operating accounts that are with third party financial institutions that exceed the Federal Deposit Insurance Corporation ("FDIC") insurance limits. While we monitor daily the cash balances in our operating accounts and adjust the cash balances as appropriate, these cash balances could be impacted if the underlying financial institutions fail or become subject to other adverse conditions in the financial markets. To date we have experienced no loss or lack of access to cash in our operating accounts.

***Our operations are vulnerable to interruption or loss due to natural disasters, epidemics, terrorist acts and other events beyond our control, which would adversely affect our business.***

Our manufacturing facility is located in a single location in Sunnyvale, California. We do not maintain a backup manufacturing facility, so we depend on our current facility for the continued operation of our business. In addition, we conduct a significant portion of other activities including administration and data processing at facilities located in the State of California which has experienced major earthquakes in the past, as well as other natural disasters. We carry limited earthquake insurance for inventory only. Such coverage may not be adequate or continue to be available at commercially reasonable rates and terms. In the event of a major earthquake or other disaster affecting our facilities, it could significantly disrupt our operations, delay or prevent product manufacture and shipment for the time required to repair, rebuild or replace our manufacturing facilities, which could be lengthy, and result in large expenses to repair or replace the facilities. In addition, concerns about terrorism or an outbreak of epidemic diseases such as avian influenza or severe acute respiratory syndrome, or SARS, especially in our major markets of North America, Europe and Asia could have a negative effect on travel and our business operations, and result in adverse consequences on our revenues and financial performance.

**Risks Related to the Regulation of our Products and Business**

***Modifications, upgrades and future products related to the CyberKnife system or new indications may require new FDA premarket approvals or 510(k) clearances, and such modifications, or any defects in design or manufacture may require us to recall or cease marketing the CyberKnife system until approvals or clearances are obtained.***

The CyberKnife system is a medical device that is subject to extensive regulation in the United States by local, state and the federal government, including by the FDA. The FDA regulates virtually all aspects of a medical device's design, development, testing manufacturing, labeling, storage, record keeping, reporting, sale, promotion, distribution and shipping. Before a new medical device, or a new use of or claim for an existing product, can be marketed in the United States, it must first receive either premarket approval or 510(k) clearance from the FDA, unless an exemption exists. Either process can be expensive and lengthy. The FDA's 510(k) clearance process usually takes from three to twelve months, but it can last longer. The process of obtaining premarket approval is much more costly and uncertain than the 510(k) clearance process and it generally takes from one to three years, or even longer, from the time the application is filed with the FDA. Despite the time, effort and cost, there can

be no assurance that a particular device will be approved or cleared by the FDA through either the premarket approval process or 510(k) clearance process.

Medical devices may be marketed only for the indications for which they are approved or cleared. The FDA also may change its policies, adopt additional regulations, or revise existing regulations, each of which could prevent or delay premarket approval or 510(k) clearance of our device, or could impact our ability to market our currently cleared device. We are also subject to medical device reporting regulations which require us to report to the FDA if our products cause or contribute to a death or a serious injury, or malfunction in a way that would likely cause or contribute to a death or a serious injury. We also are subject to Quality System and Medical Device Reporting regulations, which regulate the manufacturing and installation and also require us to report to the FDA if our products cause or contribute to a death or serious injury, or malfunction in a way that would likely cause or contribute to a death or serious injury. Our products are also subject to state regulations and various worldwide laws and regulations.

A component of our strategy is to continue to upgrade the CyberKnife system. Upgrades previously released by us required 510(k) clearance before we were able to offer them for sale. We expect our future upgrades will similarly require 510(k) clearance; however, future upgrades may be subject to the substantially more time consuming and uncertain premarket approval process.

The FDA requires device manufacturers to make their own determination of whether or not a modification requires an approval or clearance; however, the FDA can review a manufacturer's decision not to submit for additional approvals or clearances. Any modification to an FDA approved or cleared device that would significantly affect its safety or efficacy or that would constitute a major change in its intended use would require a new premarket approval or 510(k) clearance. We cannot assure you that the FDA will agree with our decisions not to seek approvals or clearances for particular device modifications or that we will be successful in obtaining 510(k) clearances for modifications.

We have obtained 510(k) clearances for the CyberKnife system for the treatment of tumors anywhere in the body where radiation is indicated. We have made modifications to the CyberKnife system in the past and may make additional modifications in the future that we believe do not or will not require additional approvals or clearances. If the FDA disagrees and requires us to obtain additional premarket approvals or 510(k) clearances for any modifications to the CyberKnife system and we fail to obtain such approvals or clearances or fail to secure approvals or clearances in a timely manner, we may be required to cease manufacturing and marketing the modified device or to recall such modified device until we obtain FDA approval or clearance and we may be subject to significant regulatory fines or penalties.

In addition, even if the CyberKnife system is not modified, the FDA and similar governmental authorities in other countries in which we market and sell our products have the authority to require the recall of our products in the event of material deficiencies or defects in design or manufacture. A government mandated recall, or a voluntary recall by us, could occur as a result of component failures, manufacturing errors or design defects, including defects in labeling and user manuals. There were a number of recalls during the fiscal year ended June 30, 2009. For example, in October 2008, the Company initiated a recall of the RoboCouch Patient Positioning System, a component part to certain CyberKnife System configurations. Thirteen RoboCouch units were affected by the recall and all repairs were made at the affected customer sites in the quarter ended December 31, 2008. A full list of recalls is available on the FDA website. The costs associated with this recall were not material. Any recall could divert management's attention, cause us to incur significant expenses, harm our reputation with customers, negatively affect our future sales and business, require redesign of the CyberKnife system, and harm our operating results. In these circumstances, we may also be subject to significant enforcement action. If any of these events were to occur, our ability to introduce new or enhanced products in a timely manner would be adversely affected, which in turn would harm our future growth.

***We must obtain and maintain regulatory approvals in international markets in which we sell, or seek to sell, our products.***

In order for us to market and sell the CyberKnife system internationally, either through direct sales personnel or through distributors, we must obtain and maintain regulatory clearances applicable to the countries and regions in which we are selling, or are seeking to sell, our products. These regulatory approvals and clearances, and the process required to obtain and maintain them, vary substantially among international jurisdictions. In some jurisdictions, we rely on our distributors to manage the regulatory process and we are dependent on their ability to do so effectively. For example, our regulatory approval in Japan was suspended for a period of twelve months during 2003 as a result of a failure of our former distributor to coordinate product modifications and obtain necessary regulatory clearances in a timely manner. As a result, the CyberKnife system was recalled in Japan and our former Japanese distributor was told to stop selling the CyberKnife system. In response, we retained a regulatory consultant who was not affiliated with our former Japanese distributor and worked with the Japanese Ministry of Health, Labor and Welfare and applied for, and received, approval to sell an updated version of the CyberKnife system under the name of CyberKnife II in Japan. By working with a new distributor, Chiyoda Technol Corporation, we were able to begin distributing the CyberKnife II system in 2004 with no probationary period. In the event that we are unable to obtain and maintain regulatory clearances for the CyberKnife system, including new clearances for system upgrades and use of the system anywhere in the body, in international markets we have entered or desire to enter, our international sales could fail to grow or decline.

***Future legislative or regulatory changes to the healthcare system may affect our business.***

Even if third-party payors provide adequate coverage and reimbursement for the CyberKnife procedure, adverse changes in third-party payors' general policies toward reimbursement could preclude market acceptance for our products and materially harm our sales and revenue growth. In the United States, there have been, and we expect there will continue to be, a number of legislative and regulatory changes and proposals to change the healthcare system, and some could involve changes that significantly affect our business. In addition, certain federal regulatory changes occur at least annually.

In April 2008, at the time CMS published final 2009 Medicare inpatient reimbursement rates, CMS issued final rules implementing significant amendments to the regulations under the federal Ethics in Patient Referrals Act, which is more commonly known as the Stark Law, with an effective date of October 1, 2009. These regulations, among other things, impose additional limitations on the ability of physicians to refer patients to medical facilities in which the physician has an ownership interest for treatment. Among other things, the regulations provide that leases of equipment between physician owners that may refer patients and hospitals must be on a fixed rate, rather than a per use, basis. Physician owned entities have increasingly become involved in the acquisition of medical technologies, including the CyberKnife system. In many cases, these entities enter into arrangements with hospitals that bill Medicare for the furnishing of medical services, and the physician owners are among the physicians who refer patients to the entity for services. The regulations limit these arrangements and could require the restructuring of existing arrangements between physicians owned entities and hospitals and may also discourage physicians from participating in the acquisition and ownership of medical technologies. As a result of the finalization of these regulations, some existing CyberKnife system operators may have to modify or restructure their corporate or organizational structures. In addition, certain existing customers that planned to open CyberKnife centers in the United States involving physician ownership could also have to restructure prior to the October 2009 effective date of the new regulations. It is possible that some of these entities may not be able to establish viable models for CyberKnife system operation and may therefore cancel their CyberKnife system purchase agreements. Accordingly, these new regulations could result in cancellations of existing CyberKnife system purchase agreements and could also reduce the attractiveness of medical technology

acquisitions, including CyberKnife system purchases, by physician-owned joint ventures or similar entities. As a result, these regulations could have an adverse impact on our product sales and therefore on our business and results of operations.

Future legislative or policy initiatives directed at reducing costs could be introduced at either the federal or state level. We cannot predict the impact on our business of any legislation or regulations related to the healthcare system that may be enacted or adopted in the future.

***We are required to comply with federal and state "fraud and abuse" law, and if we are unable to comply with such laws, we could face substantial penalties and we could be excluded from government healthcare programs, which would adversely affect our business, financial condition and results of operations.***

We are directly or indirectly through our customers, subject to various federal and state laws pertaining to healthcare fraud and abuse. These laws which directly or indirectly affect our ability to operate our business primarily include, but are not limited to, the following:

- the federal Anti-Kickback Statute, which prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce either the referral of an individual, or furnishing or arranging for a good or service, for which payment may be made under federal healthcare programs such as Medicare and Medicaid;

- state law equivalents to the Anti-Kickback Statute, which may not be limited to government reimbursed items;

- The Ethics in Patient Referral Act of 1989, also known as the Stark Law, which prohibits subject to certain exceptions, physician referrals of Medicare and Medicaid patients to an entity providing certain "designated health services" if the physician or an immediate family member has any financial relationship with the entity. The Stark Law also prohibits the entity receiving the referral from billing for any good or service furnished pursuant to an unlawful referral;

- state law equivalents to the Stark Law, which may provide even broader restrictions and require greater disclosures than the federal law; and

- the federal False Claims Act, which prohibits the knowing filing or causing the filing of a false claim or the knowing use of false statements to obtain payment from the federal government.

The following arrangements with purchasers and their agents have been identified by the Office of the Inspection General of the Department of Health and Human Services as ones raising potential risk of violation of the federal Anti-Kickback Statute:

- discount and free good arrangements that are not properly disclosed or accurately reported to federal healthcare programs;

- product support services, including billing assistance, reimbursement consultation and other services specifically tied to support of the purchased product, offered in tandem with another service or program (such as reimbursement guarantee) that confers a benefit to the purchaser;

- educational grants conditioned in whole or in part on the purchase of equipment, or otherwise inappropriately influenced by sales and marketing considerations;

- research funding arrangements, particularly post-market research activities, that are linked directly or indirectly to the purchase of products, or otherwise inappropriately influenced by sales and marketing considerations; and

- other offers of remuneration to purchasers that is expressly or impliedly related to a sale or sales volume, such as "prebates" and "upfront payment," other free or reduced-price goods or

services, and payments to cover costs of "converting" from a competitor's products, particularly where the selection criteria for such offers vary with the volume or value of business generated.

We have various arrangements with physicians, hospitals and other entities which implicate these laws. For example, physicians who own our stock also provide medical advisory and other consulting and personal services. Similarly, we have a variety of different types of arrangements with our customers. For example, our placement and shared ownership program entail the provision of our CyberKnife system to our customers under a deferred payment program, where we generally receive the greater of a fixed minimum payment or a portion of the revenues of services. Included in the fee we charge for the placement and shared ownership program are a variety of services, including physician training, educational and marketing support, general reimbursement guidance and technical support, and, in the case of the placement program, certain services and upgrades are provided without additional charge based on procedure volume. In the past, we have also provided loans to our customers. We also provide research grants to customers to support customer studies related to, among other things, our CyberKnife systems. Certain of these arrangements do not meet Anti-Kickback Statute safe harbor protections, which may result in increased scrutiny by government authorities having responsibility for enforcing these laws.

If our past or present operations are found to be in violation of any of the laws described above or other similar governmental regulations to which we or our customers are subject, we may be subject to the applicable penalty associated with the violation, including significant civil and criminal penalties, damages, fines, imprisonment and exclusion from the Medicare and Medicaid programs. The impact of any such violations may lead to curtailment or restructuring of our operations, which could adversely affect our ability to operate our business and our financial results. The risk of our being found in violation of these laws is increased by the fact that many of these laws are open to a variety of interpretations. Any action against us for violation of these laws, even if we successfully defend against it, could cause us to incur significant legal expenses, divert our management's attention from the operation of our business and damage our reputation. If enforcement action were to occur, our reputation and our business and financial condition may be harmed, even if we were to prevail or settle the action. Similarly, if the physicians or other providers or entities with which we do business are found to be non-compliant with applicable laws, they may be subject to sanctions, which could also have a negative impact on our business.

**Risks Related to Our Common Stock**

***The price of our common stock is volatile and may continue to fluctuate significantly, which could lead to losses for stockholders.***

The trading prices of the stock of newly public companies can experience extreme price and volume fluctuations. These fluctuations often have been unrelated or out of proportion to the operating performance of these companies. Since we became a public company in February 2007, our stock price has been similarly volatile. These broad market fluctuations may continue and could harm our stock price. Any negative change in the public's perception of the prospects of companies that employ similar technology or sell into similar markets could also depress our stock price, regardless of our actual results.

Factors affecting the trading price of our common stock include:

- regulatory developments related to manufacturing the CyberKnife system;
- variations in our operating results;
- changes in our operating results as a result of problems with our internal controls;

- announcements of technological innovations, new services or service enhancements, strategic alliances or significant agreements by us or by our competitors;
- recruitment or departure of key personnel;
- changes in the estimates of our operating results or changes in recommendations by any securities analyst that elects to follow our common stock;
- market conditions in our industry, the industries of our customers and the economy as a whole;
- sales of large blocks of our common stock; and
- changes in accounting principles or changes in interpretations of existing principles, which could affect our financial results.

***Substantial sales of our common stock by our stockholders, including sales pursuant to 10b5-1 plans, could depress our stock price regardless of our operating results.***

Sales of substantial amounts of our common stock in the public market could reduce the prevailing market prices for our common stock. As of August 21, 2009, we have 56,698,022 shares of common stock outstanding. The lockup agreements related to our initial public offering expired with the opening of the securities markets on September 4, 2007, and as a result a large number of shares of our common stock became eligible for sale.

If our existing stockholders sell a large number of shares of our common stock or the public market perceives that existing stockholders might sell shares of common stock, including sales pursuant to 10b5-1 plans, the market price of our common stock could decline significantly. These sales might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate.

***Our directors, executive officers and major stockholders own approximately 34.2% of our outstanding common stock as of August 21, 2009, which could limit your ability to influence the outcome of key transactions, including changes of control.***

As of August 21, 2009, our directors, executive officers, and current holders of 5% or more of our outstanding common stock, held, in the aggregate, approximately 34.2% of our outstanding common stock. As a result, a small number of stockholders have voting control and may be able to control the election of directors and the approval of significant corporate transactions. This concentration of ownership may also delay, deter or prevent a change of control of our company and will make some transactions more difficult or impossible without the support of these stockholders.

***We have implemented anti-takeover provisions that could discourage or prevent a takeover, even if an acquisition would be beneficial in the opinion of our stockholders.***

Provisions of our certificate of incorporation and bylaws could make it more difficult for a third party to acquire us, even if doing so would be beneficial in the opinion of our stockholders. These provisions include:

- authorizing the issuance of "blank check" preferred stock that could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt;
- establishing a classified board of directors, which could discourage a takeover attempt;
- prohibiting cumulative voting in the election of directors, which would limit the ability of less than a majority of stockholders to elect director candidates;
- limiting the ability of stockholders to call special meetings of stockholders;

- prohibiting stockholder action by written consent and requiring that all stockholder actions be taken at a meeting of our stockholders; and

- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings.

In addition, Section 203 of the Delaware General Corporation Law may discourage, delay or prevent a change of control of our company. Generally, Section 203 prohibits stockholders who, alone or together with their affiliates and associates, own more than 15% of the subject company from engaging in certain business combinations for a period of three years following the date that the stockholder became an interested stockholder of such subject company without approval of the board or $66^{2}/_{3}\%$ of the independent stockholders. The existence of these provisions could adversely affect the voting power of holders of common stock and limit the price that investors might be willing to pay in the future for shares of our common stock.

***We have not paid dividends in the past and do not expect to pay dividends in the future.***

We have never declared or paid cash dividends on our capital stock. We currently intend to retain all future earnings for the operation and expansion of our business and, therefore, do not anticipate declaring or paying cash dividends in the foreseeable future. The payment of dividends will be at the discretion of our board of directors and will depend on our results of operations, capital requirements, financial condition, prospects, contractual arrangements, and other factors our board of directors may deem relevant. If we do not pay dividends, a return on a stockholders' investment will only occur if our stock price appreciates.

## Item 1B. UNRESOLVED STAFF COMMENTS

None.

## Item 2. PROPERTIES

### Facilities

We lease approximately 176,000 square feet of product development, manufacturing and administrative space in three buildings in Sunnyvale, California. Our headquarters building, which is approximately 73,000 square feet, is leased to us until December 2009 and an additional office building, which is approximately 53,000 square feet, is leased to us until May 2010. The manufacturing building is approximately 50,000 square feet and is leased to us until December 2011. We have the right to renew the term of our headquarters lease for one three-year term upon prior written notice and the fulfillment of certain conditions.

We also lease approximately 25,000 square feet of development and manufacturing space in Mountain View, California. We sublease approximately 1,350 square feet of this space. The sublease term is through March 2010. This facility is leased to us until September 2010. In addition, we maintain offices in: Pittsburgh, Pennsylvania; Miami, Florida; France; China; Japan; Spain; India; Singapore; Russia; Germany; Turkey; and the United Kingdom.

We believe our current facilities are adequate to meet our current needs, but additional space, including additional radiation-shielded areas in which systems can be assembled and tested, will be required in the future to accommodate anticipated increases in manufacturing needs.

## Item 3. LEGAL PROCEEDINGS

On July 22, 2009, a securities class action lawsuit was filed in the U.S. District Court for the Northern District of California against us and certain of our current and former directors and officers.

On August 7, 2009 and August 9, 2009, two securities class action complaints, both similar to the one filed on July 22, 2009, were filed against the same defendants in the same court. All of these complaints generally allege that we and the individual defendants made false or misleading public statements regarding our operations and seeks unspecified monetary damages and other relief.

On August 5, 2009, a purported shareholder derivative lawsuit was filed in Santa Clara County Superior Court against certain of our current and former officers and directors. We are named as a nominal defendant. The complaint generally alleges that the defendants breached their fiduciary duties by misrepresenting and/or failing to disclose material information regarding our business and financial performance, and seeks unspecified monetary damages and other relief.

On September 3, 2009, Best Medical International, Inc., or Best Medical, filed a lawsuit against us claiming we induced certain individuals to leave the employment of Best Medical and join us in order to gain access to Best Medical's confidential information and trade secrets. They are seeking monetary damages and other relief.

From time to time we are involved in legal proceedings arising in the ordinary course of our business.

**Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

## PART II

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

***Stock Information***

Our common stock is traded on the Nasdaq Global Market under the symbol "ARAY." The high and low sale prices for each quarterly period during our fiscal years ended June 30, 2009 and 2008 are as follows:

| | High | Low |
|---|---|---|
| **Year ended June 30, 2009** | | |
| First Quarter | $ 9.08 | $ 6.72 |
| Second Quarter | $ 9.00 | $ 3.70 |
| Third Quarter | $ 6.59 | $ 3.78 |
| Fourth Quarter | $ 8.35 | $ 4.72 |
| **Year ended June 30, 2008** | | |
| First Quarter | $22.92 | $12.50 |
| Second Quarter | $20.99 | $14.12 |
| Third Quarter | $18.20 | $ 7.82 |
| Fourth Quarter | $10.19 | $ 6.86 |

We have never paid cash dividends on our common stock. Our Board of Directors intends to use any future earnings to support operations and reinvest in the growth and development of our business. There are no current plans to pay out cash dividends to common stockholders in the foreseeable future.

As of August 21, 2009, there were 116 registered stockholders of record of our common stock.

**Stock Performance Graph**

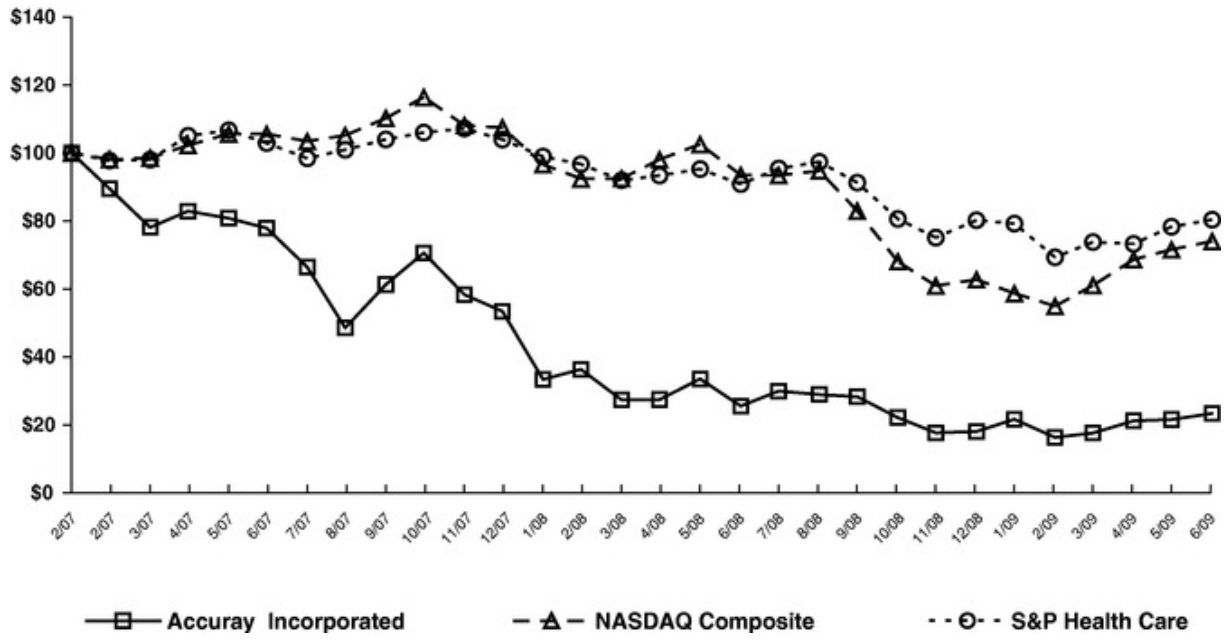
The graph set forth below compares the cumulative total stockholder return on our common stock between February 8, 2007 (the date of our initial public offering) and June 30, 2009, with the cumulative total return of (i) the S&P Healthcare Index and (ii) the Nasdaq Composite Index, over the same period. This graph assumes the investment of $100.00 on February 8, 2007 in our common stock, the S&P Healthcare Index and the Nasdaq Composite Index, and assumes the reinvestment of dividends, if any. The graph assumes the initial value of our common stock on February 8, 2007 was the closing sales price of $28.47 per share.

The comparisons shown in the graph below are based upon historical data. We caution that the stock price performance shown in the graph below is not necessarily indicative of, nor is it intended to forecast, the potential future performance of our common stock. Information used in the graph was obtained from Research Data Group, a source believed to be reliable, but we are not responsible for any errors or omissions in such information.

**COMPARISON OF 29 MONTH CUMULATIVE TOTAL RETURN***

Among Accuray Incorporated, The NASDAQ Composite Index

And The S&P Healthcare Index




* $100 invested on February 8, 2007 in stock or on January 31, 2007 in index-including reinvestment of dividends.

***Securities authorized for issuance under equity compensation plans***

The following table sets forth as of June 30, 2009 certain information regarding our equity compensation plans. All of our equity compensation plans have been approved by our security holders.

| | A | B | C |
|---|---|---|---|
| Plan category | Number of securities to be issued upon exercise of outstanding options, warrants, and rights | Weighted-average exercise price of outstanding options, warrants, and rights | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in Column A)(1) |
| Equity compensation plans approved by security holders | 8,455,316 | $ 5.70 | 2,645,757 |
| Equity compensation plans not approved by security holders | — | — | — |
| Total | 8,455,316 | $ 5.70 | 2,645,757 |

(1) Includes securities to be issued upon vesting of 519,609 restricted stock units at a weighted average grant date fair value of $18.15.

## Item 6. SELECTED FINANCIAL DATA

The following selected consolidated financial data should be read in conjunction with, and are qualified by reference to, our consolidated financial statements and related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this Form 10-K. The consolidated statements of operations for the years ended June 30, 2009, 2008, and 2007, and the consolidated balance sheet data at June 30, 2009 and 2008, are derived from, and are qualified by reference to, the consolidated financial statements that have been audited by our independent registered public accounting firm, which are included elsewhere in this Form 10-K. The consolidated statements of operations data for the years ended June 30, 2006 and 2005 and the

consolidated balance sheet data at June 30, 2007, 2006 and 2005 are derived from our audited consolidated financial statements not included in this Form 10-K.

| | Years ended June 30, | | | | |
|---|---|---|---|---|---|
| | 2009 | 2008 | 2007 | 2006 | 2005 |
| | (in thousands, except per share data) | | | | |
| **Consolidated Statements of Operations Data:** | | | | | |
| Net revenue | $ 233,598 | $ 210,381 | $ 140,452 | $ 52,897 | $ 22,377 |
| Cost of revenue(1) | 118,308 | 103,429 | 60,413 | 27,492 | 11,115 |
| Gross profit | 115,290 | 106,952 | 80,039 | 25,405 | 11,262 |
| Operating expenses: | | | | | |
| Selling and marketing(1) | 45,493 | 42,726 | 37,889 | 25,186 | 16,361 |
| Research and development(1) | 35,992 | 32,880 | 26,775 | 17,788 | 11,655 |
| General and administrative(1) | 36,223 | 32,280 | 23,915 | 15,923 | 8,129 |
| Total operating expenses | 117,708 | 107,886 | 88,579 | 58,897 | 36,145 |
| Loss from operations | (2,418) | (934) | (8,540) | (33,492) | (24,883) |
| Other income (expense), net | 3,082 | 7,184 | 3,530 | 56 | (238) |
| Income (loss) before provision for income taxes and cumulative effect of change in accounting principle | 664 | 6,250 | (5,010) | (33,436) | (25,121) |
| Provision for income taxes | 55 | 867 | 1,444 | 258 | 68 |
| Income (loss) before cumulative effect of change in accounting principle | 609 | 5,383 | (6,454) | (33,694) | (25,189) |
| Cumulative effect of change in accounting principle, net of tax of $0 | — | — | 838 | — | — |
| Net income (loss) attributable to common stockholders | $ 609 | $ 5,383 | $ (5,616) | $ (33,694) | $ (25,189) |
| Net income (loss) per common share: | | | | | |
| Basic | | | | | |
| Income (loss) before cumulative effect of change in accounting principle | $ 0.01 | $ 0.10 | $ (0.21) | $ (2.11) | $ (1.76) |
| Cumulative effect of change in accounting principle | — | — | 0.03 | — | — |
| Basic net income (loss) per share | $ 0.01 | $ 0.10 | $ (0.18) | $ (2.11) | $ (1.76) |
| Diluted | | | | | |
| Income (loss) before cumulative effect of change in accounting principle | $ 0.01 | $ 0.09 | $ (0.21) | $ (2.11) | $ (1.76) |
| Cumulative effect of change in accounting principle | — | — | 0.03 | — | — |
| Diluted net income (loss) per share | $ 0.01 | $ 0.09 | $ (0.18) | $ (2.11) | $ (1.76) |
| Weighted average common shares outstanding used in computing net income (loss) per share: | | | | | |
| Basic | 55,413 | 54,531 | 30,764 | 15,997 | 14,283 |
| Diluted | 58,729 | 60,434 | 30,764 | 15,997 | 14,283 |

(1) Includes stock-based compensation expense as follows:

| | Years ended June 30, | | | | |
|---|---|---|---|---|---|
| | 2009 | 2008 | 2007 | 2006 | 2005 |
| | (in thousands) | | | | |
| Cost of revenue | $2,285 | $1,858 | $1,205 | $ 863 | $ 454 |
| Selling and marketing | $3,441 | $4,197 | $3,958 | $2,569 | $1,903 |
| Research and development | $3,190 | $3,059 | $2,448 | $1,574 | $1,157 |
| General and administrative | $6,545 | $7,785 | $5,016 | $3,237 | $2,812 |

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| **Selected Operating Data:** | | | |
| Number of CyberKnife systems installed per year | | | |
| Americas | 25 | 19 | 22 |
| International | 11 | 12 | 11 |
| Total | 36 | 31 | 33 |

| | As of June 30, | | | |
|---|---|---|---|---|
| | 2009 | 2008 | 2007 | 2006 |
| | (in thousands) | | | |
| **Consolidated Balance Sheet Data:** | | | | |
| Cash and cash equivalents | $ 36,835 | $ 36,936 | $204,830 | $ 27,856 |
| Short-term investments | $ 64,634 | $ 85,536 | $ — | $ — |
| Long-term investments | $ 57,252 | $ 37,014 | $ — | $ — |
| Deferred cost of revenue | $ 21,917 | $ 43,391 | $ 61,231 | $ 56,588 |
| Total assets | $274,386 | $295,004 | $332,109 | $138,623 |
| Short-term debt | $ — | $ — | $ — | $ — |
| Deferred revenue | $ 75,882 | $114,175 | $154,257 | $149,664 |
| Working capital (deficit) | $ 80,083 | $ 87,744 | $148,522 | $ (3,783) |
| Redeemable convertible preferred stock | $ — | $ — | $ — | $ 27,504 |
| Stockholders' equity (deficiency) | $153,902 | $130,763 | $125,443 | $ (80,855) |

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

*You should read the following discussion of our consolidated financial condition and results of operations in conjunction with the financial statements and the notes thereto included elsewhere in this report. The following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this report on Form 10-K, particularly in "Risk Factors."*

### Overview

We have developed the first and only commercially available intelligent robotic radiosurgery system, the CyberKnife system, designed to treat solid tumors anywhere in the body as an alternative to traditional surgery. The CyberKnife system combines continuous image-guidance technology with a compact linear accelerator that has the ability to move in three dimensions according to the treatment plan. Our image-guidance technology continuously acquires images to track a tumor's location and transmits any position corrections to the robotic arm prior to delivery of each dose of radiation. Our compact linear accelerator, or linac, is a compact radiation treatment device that uses microwaves to accelerate electrons to create high-energy X-ray beams to destroy the tumor. This combination, which we refer to as intelligent robotics, extends the benefits of radiosurgery to the treatment of tumors anywhere in the body. The CyberKnife system autonomously tracks, detects and corrects for tumor and patient movement in real-time during the procedure, enabling delivery of precise, high dose radiation typically with sub-millimeter accuracy. The CyberKnife procedure requires no anesthesia, can be performed on an outpatient basis and allows for the treatment of patients that otherwise would not have been treated with radiation or who may not have been good candidates for surgery. In addition, the CyberKnife procedure avoids many of the potential risks and complications that are associated with other treatment options and is more cost effective than traditional surgery.

In July 1999, we obtained 510(k) clearance from the FDA to market the CyberKnife system for the treatment of tumors and certain other conditions in the head, neck and upper spine. In August 2001, we received FDA clearance for the treatment of tumors anywhere in the body where radiation treatment is indicated. In September 2002, we received a CE mark for the sale of the CyberKnife system in Europe. We received approval for full-body treatment in Japan in June 2008; previously our CyberKnife regulatory approvals in Japan were limited to treatment for indications in the head and neck. The CyberKnife system has also been approved for various indications in Korea, Taiwan, China and other countries. Our customers have reported that over 70,000 patients worldwide have been treated with the CyberKnife system since its commercial introduction.

In the United States, we sell to customers, including hospitals and stand-alone treatment facilities, directly through our sales organization. Outside the United States, we sell to customers in over 80 countries directly and through distributors. We have sales and service offices in Paris, France, Hong Kong, China, Tokyo, Japan, Madrid, Spain, New Delhi, India, Singapore, Moscow, Russia, Munich, Germany, Istanbul, Turkey and London, UK. As of June 30, 2009, we had 55 employees in our sales organization.

Our CyberKnife systems are either sold to our customers or placed with our customers pursuant to our shared ownership program. As of June 30, 2009, we had 176 CyberKnife systems installed at customer sites, including 174 sold and two pursuant to our shared ownership program. Of the 176 systems sold and installed, 115 are in the Americas, 43 are in Asia and 18 are in Europe.

In addition to selling the CyberKnife system to customers through direct sales, we offer alternative arrangements to customers who may not have the financial means to purchase a CyberKnife system. For example, under our shared ownership program, we retain title to the CyberKnife system while the customer has use of the system. Our shared ownership contracts generally require a minimum monthly payment from the customer, and we may earn additional revenue through the use of the system at the site. Generally, minimum monthly payments are equivalent to the revenue generated from treating three to four patients per month, and any revenue received from additional patients is shared between us and the customer. We expect to continue to offer our shared ownership program to new customers.

The shared ownership program typically has a term of five years, during which the customer has the option to purchase the system at pre-determined prices. At June 30, 2009, we had two systems installed under our shared ownership program. During the years ended June 30, 2009, 2008 and 2007, $3.2 million, $23.7 million and $3.0 million, respectively, of total revenue was recognized in the consolidated statements of operations for the sale of two, twelve and one CyberKnife system units, respectively, that were formerly under our shared ownership program. At June 30, 2009 and 2008, $747,000 and $2.3 million, respectively, of amounts for extended warranty and training services related to these sold shared ownership units remained recorded as deferred revenue, and will be recognized over the life of the extended warranty service period and as training service obligations are fulfilled.

We manufacture and assemble our CyberKnife systems at our manufacturing facility in Sunnyvale, California. We purchase major components, including the robotic manipulator, the treatment table or robotic couch, the magnetron, which creates the microwaves for use in the linear accelerator, the imaging cameras and the computers, from outside suppliers, some of which are single source. Our reliance on single source suppliers could harm our ability to meet demand for our products in a timely and cost effective manner. However, in most cases, if a supplier were unable to deliver these components, we believe that we would be able to find other sources for these components subject to any regulatory qualifications, if required. We manufacture certain other electronic and electrical subsystems, including the linear accelerator. We then assemble and integrate these components with our proprietary software and perform testing prior to shipment to customer sites.

We generate revenue by selling the CyberKnife system and by providing ongoing services and upgrades to customers following installation of the CyberKnife system. The current United States list price for the CyberKnife system ranges from approximately $4.2 million to $5.75 million depending

upon system configuration and options purchased by the customer. The list price typically includes initial training, installation, and a one-year warranty. We also offer optional hardware and software, technical enhancements and upgrades to the CyberKnife system, as part of our multiyear service plans. Currently, our most comprehensive service plan is our Diamond Elite multiyear service plan, or Diamond plan. Under our Diamond plan, customers are eligible to receive up to two upgrades per year, when and if available. Through June 30, 2008, the Diamond Plan listed for $460,000 per year and provided for annual renewals for four years including the one-year warranty period. Effective July 1, 2008, the Diamond plan lists for $495,000 per year and typically provides for annual renewals for up to five years including the one-year warranty period. The customer may cancel the service plan at any time. As of June 30, 2009, 147 of our customers had purchased service plans. Prior to introducing our Diamond plan, we offered legacy service plans, some of which continue to have future upgrade obligations. In these cases, revenue, including Cyberknife product revenue, is recognized ratably over the remaining life of the contract once all upgrade obligations have been satisfied.

The CyberKnife procedure is currently covered and reimbursed by Medicare and other governmental and non-governmental third-party payors. Medicare coverage currently exists in the hospital outpatient setting and in the free-standing clinic setting. For calendar year 2009, the national unadjusted average Medicare payment rates under Healthcare Common Procedure Coding System, or HCPCS, are $3,803 under code G0339, the billing code for the first treatment, and $2,580 under code G0340, the billing code for each of the second thru fifth treatments, approximately 3 and 10 percent less than 2008 payment rates, respectively. Payment for the free-standing clinic setting is governed by the final Medicare Physician Fee Schedule. For 2008 and 2009, payment for HCPCS codes G0339 and G0340 in the freestanding clinic settings for first and subsequent treatments were set by the local Medicare carrier and rates may vary from no payment to a payment rate exceeding the hospital outpatient payment rates. We do not anticipate a significant impact of this rule on our business or results of operations.

In addition to Medicare reimbursement to hospitals and clinics, physicians receive reimbursement for their professional services in the hospital outpatient setting and the free-standing clinic setting. Payment to physicians is based on the Medicare Physician Fee Schedule, and payment amounts are updated on an annual basis. For 2009, the American Medical Association, or AMA, issued guidance that deleted Current Procedural Technology, or CPT, code 61793, the Category I CPT code describing physician work delivering radiosurgery services, and issued the following new CPT codes: 61796, 61797, 61798, 61799, 61800, 63620 and 63621, all relating to neurosurgical procedures that should be used for intracranial and spinal procedures only. Medicare and third-party payors will require the use of these new CPT codes to describe physician services for radiosurgery services using our technology for cranial and spinal procedures. Radiosurgery procedures in other anatomies require physicians to bill unlisted CPT codes with no assigned payment rates. Payment rates for unlisted codes are set by the local Medicare carrier and rates may vary from no payment to rates equivalent to the comparable CPT rates for the 61796 series of CPT codes. The inability of physicians to obtain reimbursement under the new CPT codes or any related unlisted or successor CPT codes could result in a material adverse effect on our business.

Our total net revenue was $233.6 million, $210.4 million, and $140.5 million during the years ended June 30, 2009, 2008, and 2007, respectively. Our net income (loss) was $609,000, $5.4 million, and ($5.6) million during the years ended June 30, 2009, 2008, and 2007, respectively. Our net cash provided by (used in) operating activities was ($8.0) million, ($18.0) million, and $11.6 million during the years ended June 30, 2009, 2008, and 2007, respectively. As of June 30, 2009, our backlog (as further discussed under "Backlog" below) was approximately $555.9 million.

Our future success will depend in large part on our ability to establish and maintain a competitive position in the market. To compete successfully, we will need to continue to demonstrate the advantages of our products and technologies over alternative procedures, products and technologies, and convince physicians and other healthcare decision makers of the advantages of our products and

technologies. Our business and sales and installation cycle does not immediately create recognizable revenue. As such, we must invest in sales and marketing activities up to 24 months prior to realizing the revenue from those activities. Our ability to achieve and maintain long-term profitability is largely dependent on our ability to successfully market and sell the CyberKnife system and to control our costs and effectively manage our growth.

**Financial Operations**

***Sales and Installation Cycle***

The CyberKnife system has a relatively long sales and installation cycle because it is a major capital item and requires the approval of senior management at purchasing institutions. The typical sales and installation cycle is up to 24 months in duration and involves multiple steps. Initial steps may include pre-selling activity followed by sales presentations and other sales related activities. After the customer has expressed an intention to purchase a CyberKnife system, we typically negotiate and enter into a terms agreement setting forth the business and economic terms for the sale or acquisition of the CyberKnife system and multiyear service plan. After execution of a terms agreement, the customer typically has a specified time window in which to complete final negotiation of legal terms for the sale or acquisition of the CyberKnife system. We bifurcated the process of negotiating agreements on business and legal terms in order to reduce the level of sales force involvement in negotiation of legal terms and improve the efficiency of our customer contracting process. Nevertheless, many customers, particularly in international markets, choose to negotiate a full purchase agreement at the time of sale. The last step in the sales and installation cycle is installation of the CyberKnife system. Prior to installation, a purchasing institution must typically obtain a radiation device installation permit, and in some cases, a certificate of need, or CON, both of which must be granted by state and local government bodies. Recently, as a result of healthcare cost considerations and sensitivity to the cost of major capital equipment items, some state CON boards have become more aggressive in the evaluation of CON applications. This trend, if it continues, may make the CON process more protracted and uncertain. In addition, the purchasing institution must build a radiation shielded facility or upgrade an existing facility to house the CyberKnife system. We typically receive a deposit at the time the terms agreement or full purchase agreement is entered into, or shortly thereafter, and the remaining balance for the sale of the CyberKnife system upon delivery and installation. The customer also typically selects a service plan at the time of signing a CyberKnife system terms agreement and enters into the service plan agreement prior to installation of the system.

Upon installation, we typically recognize the CyberKnife system sale price less the fair value of one year of service. We recognize the fair value of the first year of service as revenue pro rata over the twelve months following installation. In addition, if the customer has purchased our Diamond plan and assuming annual renewals, we would receive payment at the beginning of each of the second, third, fourth and fifth years of the multiyear service plan and recognize that revenue pro rata over each year.

***Legacy Service Plans***

Prior to introducing our Diamond plan, we offered a Platinum Elite multiyear service plan, or Platinum plan. This legacy service plan was structured so that we have an obligation to deliver two upgrades per year over the course of the multiyear service plan. If we fail to deliver the upgrades, our customers are entitled to receive a refund of up to $100,000 for each upgrade not offered. To date, no refunds have been required pursuant to the Platinum plan. Beginning in November 2005, we phased out offering this legacy service plan to new customers.

The Platinum plan obligates us to deliver up to two upgrades per year during the term of the contract. We have not established fair value for those future obligations; hence, generally accepted accounting principles in the United States, or GAAP, requires that we cannot begin to recognize any of the revenue derived from the sale of the CyberKnife system or the associated service plan until all upgrade obligations have been fulfilled. Therefore, the payments made by our customers who have our

legacy Platinum plan are categorized as deferred revenue. Once we fulfill all upgrade obligations with respect to a specific Platinum plan, we ratably recognize the revenue from the sale of the CyberKnife system and the Platinum plan over the remaining life of the contract.

***Upgrades***

Customers may purchase additional upgrades as optional extras prior to the delivery of all originally specified upgrade obligations. Such additional upgrades are considered elements of the original arrangement and associated revenues are deferred until the earlier of: (1) delivery of all elements, or (2) establishment of vendor specific objective evidence, or VSOE, of fair value for all undelivered elements. Sales of additional upgrades after delivery of all specified upgrade obligations, as stated in the original contract, are considered separate arrangements and are recognized once all revenue recognition criteria applicable to the separate arrangements are met.

***Warranty***

All customers purchasing a CyberKnife system receive a one-year warranty. In circumstances where we have VSOE of fair value for all undelivered elements, we recognize the CyberKnife system purchase price minus the fair value of one year of support upon installation, and we recognize the value of one year of support ratably over the twelve months following installation.

***Shared Ownership Program Revenue***

As of June 30, 2009, our shared ownership program involved U.S. sites only. We recognize revenue monthly from our shared ownership program that consists of a minimum monthly payment. We also recognize usage-based revenue in excess of the monthly minimum based on usage reports from our customers. We recognized revenue from our shared ownership program of $3.7 million, $10.3 million, and $10.1 million for the years ended June 30, 2009, 2008, and 2007, respectively. In limited cases, we received nonrefundable upfront payments from shared ownership program customers which are treated as deferred revenue and recognized over the term of the contract.

The CyberKnife system shared ownership systems are recorded within property and equipment and are depreciated over their estimated life of seven years. Depreciation and warranty expense attributable to shared ownership systems are recorded within cost of shared ownership program as they are incurred.

***Japan Customized Service Revenue***

In May and December 2003, we entered into separate contractual arrangements to deliver customized upgrade services to our distributor in Japan for 22 CyberKnife systems previously sold. These customized upgrade services consist of two upgrade levels and are being delivered over an extended period concurrent with the distributor's efforts to coordinate delivery with their end user customers. The obligations under the upgrade programs for these 22 systems were completed as of September 30, 2008. We no longer offer this customized service program and instead offer our standard multiyear service plans.

***International Sales Revenue***

For international sales, we recognize revenue once we have met all of our obligations associated with the purchase agreement, other than for undelivered service elements for which we have VSOE of fair value. In most cases, this occurs after the distributor has shipped the unit to the end user or provided evidence of proof of sell-through to end user, assuming all of our remaining obligations have been satisfied. Payments are sometimes secured through letters of credit. In situations where we are directly responsible for installation, we recognize revenue once we have installed the CyberKnife system and have confirmed performance against specification.

In situations with legacy plans where we have future obligations related to upgrades that are subject to potential refunds, we defer revenue from the sale and service of the CyberKnife system until the final upgrade has been delivered and accepted. After we have delivered all upgrades associated with a service plan and thus eliminated any contractual right to a refund, we ratably recognize the revenue from the sale of the CyberKnife system and the plan over the remaining life of the contract or until we have VSOE of the fair value of remaining undelivered elements. Net revenue from international customers was $62.0 million, $67.8 million, and $49.3 million for the years ended June 30, 2009, 2008, and 2007, respectively.

***Backlog***

Backlog consists of the sum of deferred revenue, future uninvoiced payments that our customers are contractually committed to make and signed contingent contracts that we believe have a substantially high probability of being booked as revenue from CyberKnife system sale agreements, service plans and minimum payment requirements associated with our shared ownership program. Contingencies associated with contingent contracts that are included within backlog may include state or local government approval of a certificate of need for the installation of a radiosurgery system, approval by the board of directors of the hospital or other purchaser of the system and establishment of financing and formation of legal entities by purchasers of systems and, in the case of terms agreements, final negotiation and agreement upon our legal terms for the purchase or acquisition of the CyberKnife system. In addition, in some cases in which customers negotiate full purchase agreements, these agreements are also subject to certain contingencies. We review, on a quarterly basis with respect to each contingent contract included in backlog, whether customer engagement and progress toward satisfaction of contingencies warrant continued inclusion of the contract within backlog.

At June 30, 2009, our non-contingent backlog, which consists of contracts that have satisfied all contingencies, was approximately $406.6 million, as compared to $459.7 million at June 30, 2008. Of this non-contingent backlog, $203.2 million represented CyberKnife system sales at June 30, 2009, as compared to $259.0 million at June 30, 2008, and $203.4 million represented revenue from service plans and other recurring revenues at June 30, 2009, as compared to $200.7 million at June 30, 2008. The contingent portion of backlog was $149.3 million at June 30, 2009, as compared to $187.3 million at June 30, 2008. Total backlog was $555.9 million at June 30, 2009, of which $284.8 million represented CyberKnife sales and $271.1 million represented other recurring revenues, as compared to $647.0 million at June 30, 2008, of which $358.6 million represented CyberKnife sales and $288.4 million represented other recurring revenues. We anticipate that this backlog will be recognized over the next five years as installations occur, upgrades are delivered and services are provided. Although backlog includes contractual commitments from our customers, we may be unable to convert this entire backlog, including the entire non-contingent backlog, into recognized revenue due to factors outside our control.

As we have indicated during fiscal 2009, beginning with fiscal year 2010 we will no longer provide information about contingent backlog. We think that such information is of limited use in building financial models. Orders that we consider to be contingent will not disclosed until all contingencies have been cleared.

For the current quarter, the data that we have provided as to the amounts of both contingent and non-contingent backlog are based on the methodology that we have used throughout fiscal 2009. As part of the transition in our reporting methods, we also plan to refine our definition of backlog in fiscal 2010 to enhance the usefulness of this information in analyzing and building models of our business. Orders that do not meet those refined criteria will not be reported as backlog. In terms of trends, this is likely to lead to a reduction in backlog in the first quarter of fiscal 2010 from what was previously reported in the fourth quarter of fiscal 2009 wholly apart from the amount of new orders received in the first quarter.

**Results of Operations**

***Overview***

Our results of operations are divided into the following components:

**Net revenue.** Our net revenue consists primarily of product revenue (revenue derived primarily from the sale of CyberKnife systems and the sale of linacs for other uses), shared ownership program revenue (revenue generated from our shared ownership program), services revenue (revenue generated from sales of service plans and training) and other revenue (revenue from specialized upgrade services for units previously sold in Japan and other specialized services).

**Cost of revenue.** Cost of revenue consists primarily of material, labor and overhead costs. In future periods, we expect cost of revenue may fluctuate from quarter to quarter depending on system configurations ordered by our customers and overall revenue mix.

**Selling and marketing expenses.** Selling and marketing expenses consist primarily of costs for personnel and costs associated with participation in medical conferences, physician symposia, and advertising and promotional activities. We expect marketing expenses may fluctuate from quarter to quarter due to the timing of major marketing events, such as significant trade shows.

**Research and development expenses.** Research and development expenses consist primarily of activities associated with our product development, regulatory, and clinical study arrangements.

**General and administrative expenses.** General and administrative expenses consist primarily of compensation and related costs for finance, in-house legal, and human resources, and external expenses related to accounting, legal and other consulting fees.

**Other income, net.** Other income, net consists primarily of interest earned on our cash and cash equivalents and investments, unrealized losses on our long-term trading securities, net of unrealized gains on our put option, foreign currency transaction gains and losses, losses on fixed asset disposals, and state and local sales and use tax fines and penalties. We expect interest income to decrease in the near future in response to the recent decline in interest rates, offset by unrealized gains on our long-term trading securities, net of unrealized losses on our put option.

***Deferred Revenue—Platinum Multiyear Service Plans***

We are required to defer all of the revenue associated with our legacy multiyear service plans, including our Platinum plan, until we have satisfied all of the specified obligations related to the delivery of upgrades to the CyberKnife system during the life of the service plan. This includes deferring revenue for the cash received for the purchase of the CyberKnife system and multiyear service plans until we have delivered all upgrades which the customer is eligible to receive. Once we have satisfied our obligations for delivery of upgrades under the plan, we recognize revenue ratably over the remaining life of the service plan. We have not offered the Platinum service plan to new customers since we phased it out when we introduced our Diamond plan in November 2005. Prior to fiscal 2009 we had installed the final upgrades and recognized all revenue on systems sold under Gold agreements. As of the end of June 2009 we had installed the final upgrade on all but one system sold under Platinum agreements. We recognized approximately $60 million of revenue related to these Platinum agreements in fiscal 2009. We anticipate that we will install final upgrades in the remaining Platinum system and recognize the balance of remaining deferred Platinum revenue over the next two years, with approximately $24 million in fiscal 2010 and approximately $4 million in fiscal 2011.

***Years ended June 30, 2009, 2008, and 2007***

**Net revenue**

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| | (in thousands) | | |
| Net revenue | $233,598 | $210,381 | $140,452 |
| Products | $159,257 | $152,374 | $110,320 |
| Shared ownership program | $ 3,651 | $ 10,262 | $ 10,090 |
| Services | $ 66,344 | $ 38,808 | $ 16,860 |
| Other | $ 4,346 | $ 8,937 | $ 3,182 |

Total net revenue for the year ended June 30, 2009 increased $23.2 million from the year ended June 30, 2008. During the year ended June 30, 2009, 36 CyberKnife systems were installed, of which 35 were sold and one was attributable to our shared ownership program, compared to 31 systems installed, including 27 units sold and four attributable to our shared ownership program during the year ended June 30, 2008.

Excluding revenue recognized for systems sold under our Platinum plan, we recognized $123.7 million of product revenue in fiscal 2009, associated with 40 CyberKnife systems, which included 38 units sold and two units purchased out of in our shared ownership program. By comparison, during fiscal 2008, we recognized product revenue of $130.9 million associated with 46 CyberKnife systems, which included 34 units sold and 12 units purchased out of our shared ownership program. The decrease in fiscal 2009 is due primarily to the sale in fiscal 2008 of twelve CyberKnife systems that had been in our shared ownership program for an aggregate purchase price of $23.7 million offset partially by the increase from 34 to 38 units sold not related to our shared ownership program.

Excluding revenue recognized for systems sold under our Platinum plan, we recognized non-Platinum service revenue of $41.9 million for the year ended June 30, 2009, which increased approximately $15.5 million from the year ended June 30, 2008, due to the continued growth in our installed base under service plans. As of June 30, 2009 and 2008, 123 and 77 of our customers, respectively, had purchased non-Platinum service plans.

We recognized $60.1 million of revenue in fiscal 2009 from systems sold under our Platinum plan, $35.6 million for product revenue and $24.5 million for service revenue. We recognized $34.0 million of revenue in fiscal 2008 from systems sold under our Platinum plan, $21.5 million for product revenue and $12.5 million for service revenue. By the end of June 2009 we had satisfied all upgrade delivery obligations on 29 of the 30 units sold under our Platinum plan. Once all upgrade delivery obligations have been satisfied, revenue is recognized over the remaining term of the contract service term. We anticipate that revenue recognized from systems sold under our Platinum plan will decline to approximately $24 million in 2010 and $4 million in 2011.

Shared ownership program revenue for the year ended June 30, 2009 decreased approximately $6.6 million from the year ended June 30, 2008, primarily due to the sale of 16 CyberKnife systems through the year ended June 30, 2009 that had been in our shared ownership program. We anticipate revenue from our shared ownership program will decrease in future periods due to the sale of the shared ownership systems through June 30, 2009.

Revenue from upgrade services in Japan, classified as "Other revenue" in our consolidated statements of operations for the year ended June 30, 2009, decreased approximately $4.6 million from the year ended June 30, 2008 due to a decrease in upgrade services provided to our installed systems in Japan.

Total net revenue for the year ended June 30, 2008 increased $69.9 million from the year ended June 30, 2007. During the year ended June 30, 2008, we installed 31 CyberKnife systems, including 27

units sold and four attributable to our shared ownership program. During the year ended June 30, 2007, 33 CyberKnife systems were installed, of which 31 units were sold and two units were attributable to our shared ownership program.

Excluding revenue recognized under our Platinum plan during the year ended June 30, 2008, we recognized product revenue of $130.9 million associated with 46 CyberKnife systems, which included 34 units sold and twelve units sold that had been in our shared ownership program. During the year ended June 30, 2007, we recognized product revenue of $104.0 million associated with 32 CyberKnife systems, which included 31 units sold and one unit that had been in our shared ownership program. The increase in product revenue was primarily attributable to the sale of twelve CyberKnife systems that had been in our shared ownership program for an aggregate purchase price of $23.7 million during the year ended June 30, 2008. Also, during the year ended June 30, 2008, we satisfied all revenue recognition criteria for seven units previously sold to a distributor in China and recognized $13.1 million of product revenue related to these units.

We recognized non-Platinum service revenue of $26.3 million for the year ended June 30, 2008 which increased approximately $11.8 million from the year ended June 30, 2007, primarily due to the continued growth in our installed base under service plans. As of June 30, 2008 and 2007, 77 and 45 of our customers, respectively, had purchased non-Platinum service plans.

For system units attributable to our Platinum plan, we recognized revenue of $34.0 million of revenue recognized from 20 system units, of which $21.5 million was attributable to product revenue and $12.5 million was attributable to service revenue. During the year ended June 30, 2007, we recognized revenue of $8.6 million from 12 system units attributable to our Platinum plan, of which $6.3 million was attributable to product revenue and $2.3 million was attributable to service revenue.

Shared ownership program revenue for the year ended June 30, 2008 remained relatively consistent from the year ended June 30, 2007.

Revenue from upgrade services in Japan, classified as "Other revenue" in our consolidated statements of operations for the year ended June 30, 2008, increased approximately $5.8 million from the year ended June 30, 2007 due to an increase in upgrade services provided to our installed systems in Japan.

**Gross profit**

| | Years ended June 30, | | | | | |
|---|---|---|---|---|---|---|
| | 2009 | | 2008 | | 2007 | |
| | (Dollars in thousands) | (% of net revenue) | (Dollars in thousands) | (% of net revenue) | (Dollars in thousands) | (% of net revenue) |
| Gross profit | $115,290 | 49.4% | $106,952 | 50.8% | $ 80,039 | 57.0% |
| Products | $ 90,353 | 56.7% | $ 85,191 | 55.9% | $ 66,957 | 60.7% |
| Shared ownership program | $ 2,876 | 78.8% | $ 7,745 | 75.5% | $ 7,453 | 73.9% |
| Services | $ 21,753 | 32.8% | $ 11,943 | 30.8% | $ 4,591 | 27.2% |
| Other | $ 308 | 7.1% | $ 2,073 | 23.2% | $ 1,038 | 32.6% |

Gross profit as a percentage of net revenue for the year ended June 30, 2009 decreased slightly from the year ended June 30, 2008. This decrease is attributable to increases in the mix of the proportion of services revenue as a percentage of total net revenues, which have higher costs of revenue as compared to product revenue and decrease in shared ownership revenues as a percentage of total net revenues, which have lower costs of revenue as compared to product revenue. The increase in service revenue margins was attributable mainly to an increase in platinum service margins due to high margins on five Platinum systems that were fully recognized during the year ended June 30, 2009, in accordance with the final upgrades being installed at these sites during the final period of the service contract term, compared to one site that was fully recognized during the year ended June 30, 2008.

Shared ownership program revenue as a percentage of net revenues for the year ended June 30, 2009 decreased primarily due to the sale of two CyberKnife systems that had been in our shared ownership program during the year ended June 30, 2009 compared to the sale of 12 CyberKnife systems that had been in our shared ownership program during the year ended June 30, 2008.

Gross profit as a percentage of net revenue for the year ended June 30, 2008 decreased from the year ended June 30, 2007 due mainly to a decrease in margins for product revenues plus an increase in service revenues, which have high costs of revenue. The decrease in products revenue margins was attributable mainly to an increase in sales of CyberKnife systems that were previously in our shared ownership program and an increase in CyberKnife system shipments through our distributor channel during the year ended June 30, 2008, both of which typically have lower gross margins than conventional CyberKnife system sales. We recognized revenue associated with the sale of 12 and one CyberKnife systems that had been in our shared ownership program during the years ended June 30, 2008 and 2007, respectively. Also during the year ended June 30, 2008, we satisfied all revenue recognition criteria for seven systems previously sold to a distributor in China and recognized $13.1 million of non-recurring product revenue related to these systems. No such systems were sold during the year ended June 30, 2007.

**Selling and marketing expenses**

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| | (Dollars in thousands) | | |
| Sales and marketing | $45,493 | $42,726 | $37,889 |
| *% of net revenue* | *19.5%* | *20.3%* | *27.0%* |

Selling and marketing expenses for the year ended June 30, 2009 increased $2.8 million from the year ended June 30, 2008. The increase was primarily attributable to an increase of $1.8 million in sales commissions due to an increase in sales and previously paid amounts that were expensed for employees terminated during the year ended June 30, 2009, an increase of $468,000 in expenses primarily related to contribution made to the CyberKnife Society, and an increase of $462,000 in severance related charges recorded under the Plan.

Selling and marketing expenses for the year ended June 30, 2008 increased $4.8 million from the year ended June 30, 2007. The increase was primarily attributable to an increase of $3.1 million in salary and related costs, including stock-based compensation, largely due to increased headcount and an increase of $1.7 million in facility and operational costs as a result of the continuing expansion of our international sales presence.

**Research and development expenses**

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| | (Dollars in thousands) | | |
| Research and development | $35,992 | $32,880 | $26,775 |
| *% of net revenue* | *15.4%* | *15.6%* | *19.1%* |

Research and development expenses for the year ended June 30, 2009 increased $3.1 million from the year ended June 30, 2008. The increase was primarily attributable to an increase of $1.4 million in spending on clinical development studies primarily for lung and prostate, an increase of $1.4 million in costs related to additional quality assurance and technical publications activities, and an increase of $287,000 in severance related charges recorded under the Plan.

Research and development expenses for the year ended June 30, 2008 increased $6.1 million from the year ended June 30, 2007. The increase was primarily attributable to an increase of $5.2 million in salary and related costs, including stock-based compensation, largely due to increased headcount, an

increase of $1.3 million in consulting and outside services related to increased research and development activity for various CyberKnife projects, and an increase of $819,000 in non-inventory materials and other operational costs as a result of increasing our research and development activity for various CyberKnife projects.

**General and administrative expenses**

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| | (Dollars in thousands) | | |
| General and administrative | $36,223 | $32,280 | $23,915 |
| *% of net revenue* | *15.5%* | *15.3%* | *17.0%* |

General and administrative expenses for the year ended June 30, 2009 increased $3.9 million from the year ended June 30, 2008. The increase was primarily attributable to an increase of $2.4 million in severance benefits due to employee separation costs and costs recorded under the Plan, an increase of $428,000 in outside consulting services related mainly to expenses recorded for Morphormics, Inc. ("Morphormics"), our variable interest entity which we are required to consolidate in our financial results subsequent to the acquisition in July 2008, an increase of $883,000 in legal fees and accounting, audit and tax fees mainly as a result of the investigation of the handling and accounting for certain inventory items conducted during the year ended June 30, 2009, and an increase of $444,000 in bad debt expense.

General and administrative expenses for the year ended June 30, 2008 increased $8.4 million from the year ended June 30, 2007. The increase was primarily attributable to an increase of $6.9 million in salary and related costs, including stock-based compensation, largely due to increased headcount and an increase in stock-based compensation charges associated with option grants to purchase common stock, and an increase of $1.5 million in other corporate administration costs from being a public company for all of fiscal 2008 compared to five months in fiscal 2007.

**Other income, net**

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| | (Dollars in thousands) | | |
| Other income, net | $3,082 | $7,184 | $3,530 |
| *% of net revenue* | *1.3%* | *3.4%* | *2.5%* |

Other income, net for the year ended June 30, 2009 decreased $4.1 million from the year ended June 30, 2008 primarily due to a decrease of $3.8 million in interest income due to a decrease in both the average daily balances kept in interest bearing accounts and the interest rates earned on amounts kept in those accounts during the year ended June 30, 2009 compared to the year ended June 30, 2008 and net unrealized losses of $319,000 related to the change in fair value of our trading securities.

Other income, net for the year ended June 30, 2008 increased $3.6 million from the year ended June 30, 2007. The increase was primarily due to higher average daily balances kept in interest bearing accounts, as a result of receiving proceeds from our initial public offering, or IPO, in February 2007, for 12 months during the year ended June 30, 2008 compared to only five months during the year ended June 30, 2007.

**Cumulative effect of change in accounting principle.** For the year ended June 30, 2007, we recorded the cumulative effect of a change in accounting principle of $838,000 related to our adoption effective July 1, 2006, of Statement of Financial Accounting Standards, or SFAS No. 123R, *Share-Based Payment, an amendment of FASB Statements Nos. 123 and 95,* ("SFAS 123R"), related to our accounting for stock-based compensation. We had previously accounted for our stock-based compensation expense in accordance with SFAS No. 123, *Accounting for Stock-Based Compensation,* ("SFAS 123"), which permitted us to either estimate forfeitures in determining our stock-based compensation expense or to adjust the expense at the time forfeitures occurred. SFAS 123R requires that we estimate forfeitures. Since we had previously adjusted our stock-based compensation expense at the time forfeitures occurred, we have included in our consolidated statement of operations for the year ended June 30, 2007 the cumulative effect of a change in accounting principle for the adjustment to reflect forfeitures related to compensation expense recorded in prior periods.

**Provision for income taxes**

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| | (Dollars in thousands) | | |
| Provision for income taxes | $ 55 | $867 | $1,444 |
| *% of net revenue* | *0.02%* | *0.4%* | *1.0%* |

The provision for income taxes for the year ended June 30, 2009 decreased $812,000 from the year ended June 30, 2008. In fiscal 2009, we recorded a decrease in foreign taxes of $142,000 as compared to the prior year as the result of changes in our jurisdictional mix of income. We also recorded a decrease in federal and state taxes of $670,000 as compared to the prior year due to the carryback of a current year net operating loss to the prior year.

The provision for income taxes for the year ended June 30, 2008, decreased $577,000 from the year ended June 30, 2007. In fiscal 2008, we recorded a decrease in foreign taxes of $58,000 as compared to the prior year as the result of the recognition of tax benefits associated with the utilization of foreign net operating losses. We also recorded a decrease in federal and state alternative minimum taxes, or AMT, of $519,000 primarily due to a decrease in taxable income resulting from an increase in stock option deductions available under SFAS 123R in the current year.

As of June 30, 2009, we had federal and state net operating loss carryforwards of $49.4 million and $32.4 million, respectively. These federal and state net operating loss carryforwards are available to

offset against future taxable income, if any, in varying amounts and will begin to expire beginning in 2019 and 2015 for federal and state purposes, respectively. Such net operating loss carryforwards include tax benefits from employee option exercises in excess of the stock-based compensation expense that has been recognized for those awards in accordance with SFAS 123R. We will record approximately $7.3 million as a credit to additional paid in capital if and when such excess benefits are ultimately realized. We also had federal and state research and development tax credit carryforwards of approximately $3.3 million and $4.1 million, respectively. If not utilized, the federal tax credit carryforwards will begin to expire in 2019, while the state tax credits have no expiration date. In addition, among other matters, realization of the entire deferred tax asset is dependent on our ability to generate sufficient taxable income prior to the expiration of the carryforwards. Due to the inconsistent history of net operating income as adjusted for permanent differences, we cannot conclude that the net domestic deferred tax assets will more likely than not be realized. Accordingly, we have recorded a valuation allowance against our domestic net deferred tax assets.

At June 30, 2009, there was no provision for U.S. income tax for undistributed earnings as it is currently our intention to reinvest these earnings indefinitely in operations outside the U.S. If repatriated, these earnings could result in a tax expense at the current U.S. Federal statutory tax rate of 35%, subject to available net operating losses and other factors. Subject to limitation, tax on undistributed earnings may also be reduced by foreign tax credits that may be generated in connection with the repatriation of earnings.

We adopted FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes—an interpretation of FASB Statement No. 109*, ("FIN 48"), on July 1, 2007. See Note 9 to the Consolidated Financial Statements for a detail description.

**Stock-Based Compensation Expense**

Effective July 1, 2006, we adopted SFAS 123R using the modified prospective method under which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS 123R for all share-based payments granted or modified after the effective date and (b) based on the previous requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. SFAS 123R also requires the benefits of tax deductions in excess of recognized compensation cost be reported as a financing cash flow, rather than as an operating cash flow as required under previous literature.

SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary in subsequent periods if actual forfeitures differ from initial estimates. Stock-based compensation expense was recorded net of estimated forfeitures for the years ended June 30, 2009, 2008 and 2007 such that expense was recorded only for those stock-based awards that are expected to vest. For the years ended June 30, 2009, 2008 and 2007, we recorded $15.5 million, $16.9 million and $12.6 million, respectively, of stock-based compensation expense, net of estimated forfeitures, for stock options, 2007 Employee Stock Purchase Plan, or ESPP, options and restricted stock units granted to employees. During the years ended June 30, 2009, we recognized $929,000 of stock-based compensation expense related to accelerated vesting of stock options and RSUs in conjunction with non-recurring employee separation costs, included in the total compensation amounts above. No such expenses were recognized during the years ended June 30, 2008 and 2007.

For the year ended June 30, 2007, we recorded the cumulative effect of a change in accounting principle of $838,000 related to the adoption of SFAS 123R since we had previously adjusted stock-based compensation expense at the time forfeitures occurred in accordance with SFAS 123. The cumulative effect of this change in accounting principle reflects estimated forfeitures related to periods prior to July 1, 2006.

As of June 30, 2009, there was approximately $30.9 million, net of estimated forfeitures, of unrecognized compensation cost related to unvested stock options, ESPP options and restricted stock units which we expect to be recognized over a weighted average period of 2.00 years.

During the years ended June 30, 2009, 2008, and 2007, we recognized $0, $114,000, and $171,000, respectively, of stock-based compensation expense for stock options granted to non-employees. For certain stock option grants, we made modifications to the option terms. These modifications included extensions of the vesting period and acceleration of vesting.

**Liquidity and Capital Resources**

At June 30, 2009, we had $36.8 million in cash and cash equivalents. During the year ended June 30, 2009, cash and cash equivalents decreased by $101,000. This decrease was primarily attributable to cash used in operating activities of $8.0 million, and was partially offset by cash provided by investing activities of $1.9 million and cash provided by financing activities of $5.8 million. In November 2008, we obtained a line of credit with UBS. The line of credit is due on demand and allows for borrowings of up to 75% of par value of ARS. No borrowings were outstanding as of June 30, 2009. We believe that we have sufficient cash resources and anticipated cash flows to continue in operation for at least the next 12 months.

***Years ended June 30, 2009, 2008, and 2007***

**Cash Flows From Operating Activities.** Net cash used in operating activities was $8.0 million for the year ended June 30, 2009. Our net income of $609,000 during fiscal year 2009 was offset by an increase in accounts receivable of $2.8 million, a decrease in deferred revenue, net of deferred cost of revenue, of $16.5 million, and an increase in inventories of $9.7 million. The increase in accounts receivable was primarily a result of the timing difference between the shipment of products and the receipt of customer payment. The decrease in deferred revenue, net of deferred cost of revenue, was primarily a result of the recognition of revenue previously deferred for systems sold under our Platinum plan offset partially by differences between invoicing customers for products and services and the recognition of the invoicing as revenue. The increase in inventories was due primarily to an increase in our business volume and the increase in our worldwide installed base and associated service inventory requirements. Positive cash flow from working capital changes include an increase in accrued liabilities of $4.9 million of which $1.3 million was related to the inventory investigation in the first quarter and the balance was due to the timing differences between the receipt of goods and service and vendor payments. Non-cash charges included $15.5 million of stock-based compensation, $2.7 million of charges for write-downs of inventory and $6.7 million of depreciation and amortization expense.

Net cash used in operating activities was $18.0 million for the year ended June 30, 2008. Our net income of $5.4 million during fiscal year 2008 was offset by an increase in accounts receivable of $23.9 million, a decrease in deferred revenue, net of deferred cost of revenue, of $13.8 million, and an increase in inventories of $10.4 million. The increase in accounts receivable was primarily a result of the timing difference between the shipment of products and the receipt of customer payment. The decrease in deferred revenue, net of deferred cost of revenue, was primarily a result of the timing of differences between invoicing customers under service contracts and the recognition of revenue over the contractual service period, the continued satisfaction of specified obligations to begin revenue recognition for units covered by our Platinum plans and the recognition of revenue and cost of revenue for units previously shipped to a distributor in China. The increase in inventories was due primarily to an increase in our business volume. Non-cash charges included $16.9 million of stock- based compensation and $7.7 million of depreciation and amortization expense.

Net cash provided by operating activities was $11.6 million for the year ended June 30, 2007. Our net loss of $5.6 million during fiscal year 2007 was offset by non-cash charges of $6.2 million of depreciation and amortization expense, and $12.6 million of stock-based compensation offset by the cumulative effect of a change in accounting principle of $838,000 due to the adoption of SFAS 123R.

Other significant working capital changes that contributed to positive cash flows provided by operations in fiscal 2007 included an increase in accounts payables of $9.5 million, an increase in accrued liabilities of $3.1 million and an increase in deferred revenue, net of deferred cost of revenue of $1.9 million. The increase in accounts payable was due to increases in the volume of our business and the increase in accrued liabilities was due to increases in compensation related accruals due to increased headcount. The increase in deferred revenue, net of deferred cost of revenue, was primarily a result of the timing differences between invoicing customers under service contracts and the recognition of revenue over the contractual service period, and the continued satisfaction of specified obligations to begin revenue recognition for units covered by our Platinum service plans. Offsets to positive cashflow included an increase in inventories of $8.8 million, an increase in prepaid expenses and other current assets of $5.1 million, and a decrease in customer advances of $1.5 million due to an increase in the number of systems shipped.

**Cash Flows From Investing Activities.** Net cash provided by investing activities was $1.9 million for the year ended June 30, 2009 and was attributable to a decrease in restricted cash of $4.3 million and net marketable security activities of $1.8 million, which consisted of $157.7 million of sales and maturities of marketable securities offset by $155.9 million in purchases. We also used $4.2 million of cash for purchases of property and equipment. The decrease in restricted cash is due to the release of amounts related to contracts with customers requiring that deposited cash amounts be secured via letter of credit until delivery of the CyberKnife unit occurs.

Net cash used in investing activities was $133.4 million for the year ended June 30, 2008 and was attributable to net investment of our excess cash and cash equivalents in higher yielding investment accounts of $123.6 million, which consisted of $177.7 million of purchases and $54.1 million of sales and maturities of marketable securities, $5.0 million of purchases of property and equipment, and $4.8 million of restricted cash activity. The increase in investment activity during the year ended June 30, 2008 is due primarily to the January 2008 investment of proceeds from our initial public offering in February 2007. The increase in restricted cash is due to arrangements in contracts with customers requiring that deposited cash amounts be secured via letter of credit until delivery of the CyberKnife unit occurs.

Net cash used in investing activities was $7.5 million for the year ended June 30, 2007, which was primarily due to purchases of property and equipment of $7.2 million.

Purchases of property and equipment in all periods were due to the expansion of our facilities and operations.

**Cash Flows From Financing Activities.** Net cash provided by financing activities was $5.8 million for the year ended June 30, 2009 and was primarily attributable to proceeds from the exercise of common stock options and the purchase of common stock under our ESPP.

Net cash used in financing activities was $16.2 million for the year ended June 30, 2008 and was primarily attributable to stock repurchases of $24.0 million, partially offset by proceeds from the exercise of common stock options of $4.4 million and proceeds from our ESPP of $3.0 million.

Net cash provided by financing activities was $172.9 million for the year ended June 30, 2007 and was primarily attributable to net proceeds from our initial public offering of $170.6 million and proceeds from the exercise of common stock options of $1.7 million.

***Operating Capital and Capital Expenditure Requirements***

Our future capital requirements depend on numerous factors. These factors include but are not limited to the following:

- revenue generated by sales of the CyberKnife system, our shared ownership program and service plans;

- costs associated with our sales and marketing initiatives and manufacturing activities;
- rate of progress and cost of our research and development activities;
- costs of obtaining and maintaining FDA and other regulatory clearances of the CyberKnife system;
- effects of competing technological and market developments; and
- number and timing of acquisitions and other strategic transactions.

We believe that our current cash and cash equivalents will be sufficient to meet our anticipated cash needs for working capital and capital expenditures for at least 12 months. If these sources of cash and cash equivalents are insufficient to satisfy our liquidity requirements, we may seek to sell additional equity or debt securities or obtain additional credit facilities. The sale of additional equity or convertible debt securities could result in dilution to our stockholders. If additional funds are raised through the issuance of debt securities, these securities could have rights senior to those associated with our common stock and could contain covenants that would restrict our operations. Additional financing may not be available at all, or in amounts or on terms acceptable to us. If we are unable to obtain this additional financing, we may be required to reduce the scope of our planned product development and marketing efforts.

**Contractual Obligations and Commitments**

The following table is a summary of our non-cancelable contractual cash obligations, net of sublease income as of June 30, 2009:

| | | Payments due by period | | | |
|---|---|---|---|---|---|
| | Total | Less than 1 year | 1 - 3 years | 3 - 5 years | More than 5 years |
| | | (in thousands) | | | |
| Operating leases | $ 7,507 | $4,012 | $ 2,964 | $ 531 | $ — |
| Sublease income | $ (167) | $ (167) | $ — | $ — | $ — |
| Total | $ 7,340 | $3,845 | $ 2,964 | $ 531 | $ — |

**Off Balance Sheet Arrangements**

We do not have any off balance sheet arrangements.

**Inflation**

We do not believe that inflation has had a material impact on our business and operating results during the periods presented.

**Critical Accounting Policies and Estimates**

The discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these consolidated financial statements requires management to make estimates and judgments that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, as well as revenue and expenses during the reporting periods. We evaluate our estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Actual results could therefore differ materially from those estimates under different assumptions or conditions.

Our significant accounting policies are more fully described in the notes to our consolidated financial statements included elsewhere in this report. We believe the following are our critical accounting policies including the more significant estimates and assumptions used in preparation of our consolidated financial statements.

***Revenue Recognition***

We earn revenue from the sale of our products, our shared ownership program, and the provision of related services, which can include installation services, post-contract customer support, or PCS, training and consulting. Our products and upgrades to those products include software that is essential to the functionality of the products and accordingly, we account for the sale of our products pursuant to Statement of Position No. 97-2, *Software Revenue Recognition*, or SOP 97-2, as amended. We record our revenues net of any value added or sales tax. From time to time, we introduce customers to third party financing organizations. No amounts received from these third party financing organizations are at risk.

We recognize product revenues for sales of the CyberKnife system, replacement parts and accessories when there is persuasive evidence of an arrangement, the fee is fixed or determinable, collection of the fee is probable and delivery has occurred as prescribed by SOP 97-2. Payments received in advance of product shipment are recorded as customer advances and are recognized as revenue or deferred revenue upon product shipment or installation.

For arrangements with multiple elements, we allocate arrangement consideration to services and PCS based upon VSOE of fair value of the respective elements. VSOE of fair value for the services element is based upon our standard rates charged for the products or services when such products or services are sold separately or based upon the price established by management having the relevant authority when that service is not yet being sold separately. When contracts contain multiple elements, and VSOE of fair value exists for all undelivered elements, we account for the delivered elements, principally the CyberKnife system, based upon the "residual method" as prescribed by SOP No. 98-9, *Modification of SOP No. 97-2 with Respect to Certain Transactions*, or SOP 98-9. If VSOE of fair value does not exist for all the undelivered elements, all revenue is deferred until the earlier of: (1) delivery of all elements, or (2) establishment of VSOE of fair value for all undelivered elements.

*CyberKnife Sales with Legacy Service Plans*

For sales of CyberKnife systems with PCS arrangements that include specified or committed upgrades for which we have not established VSOE of fair value, all revenue is deferred until the specified or committed upgrades are delivered. In such cases, once all upgrade obligations have been delivered, all deferred revenue is recognized ratably over the remaining life of the PCS arrangement.

Sales of additional upgrades as optional extras prior to the delivery of all originally specified upgrade obligations are considered additional elements of the original arrangement and associated revenues are deferred and accounted for as described above. Sales of additional upgrades after delivery of all specified upgrade obligations, as stated in the original contract, are recognized once all revenue recognition criteria applicable to those arrangements are met.

*CyberKnife Sales with Nonlegacy Service Plans*

In fiscal year 2006, we began selling CyberKnife systems with PCS contracts that only provide for upgrades when and if they become available. We have established VSOE of the fair value of PCS in these circumstances. For arrangements with multiple elements that include the CyberKnife system, installation services, training services and a PCS service agreement, we recognize the CyberKnife system and installation services revenue following installation and acceptance of the system by application of the residual method as prescribed in SOP No. 98-9 when VSOE of fair value exists for all undelivered elements in the arrangement, including PCS.

*Other Revenue-Japan Upgrade Services*

Other revenue primarily consists of upgrade revenues related to the sale of specialized services specifically contracted to provide current technology capabilities for units previously sold through a distributor into the Japan market. The upgrade programs include elements where VSOE of fair value has not been established for the PCS. As a result, associated revenues are deferred and recognized ratably over the term of the PCS arrangement, generally four years.

*PCS and Maintenance Services*

Service revenue for providing PCS, which includes warranty services, extended warranty services, unspecified when and if available product updates and technical support is deferred and recognized ratably over the service period, generally one year, until no further obligation exists. At the time of sale, we provide for the estimated incremental costs of meeting product warranty if the incremental warranty costs are expected to exceed the related service revenues. Training and consulting service revenues, that are not deemed essential to the functionality of the CyberKnife system, are recognized as such services are performed.

Costs associated with providing PCS and maintenance services are expensed when incurred, except when those costs are related to units where revenue recognition has been deferred. In those cases, the costs are deferred until the recognition of the related revenue and are expensed over the period of revenue recognition.

*Distributor Sales*

Sales to third party distributors are evidenced by distribution agreements governing the relationships together with binding purchase orders or signed quotations on a transaction-by-transaction basis. We record revenues from sales of CyberKnife systems to distributors based on a sell-through method where revenue is only recognized upon shipment of the product to the end user customer or we are provided evidence of proof of sell-through to the end user, and once all revenue recognition criteria are met including completion of all our obligations under the terms of the purchase order. For sales of upgrades and accessories to distributors, revenue is recognized on either a sell-through or sell-in basis, depending upon the terms of the purchase order and once all revenue recognition criteria are met. These criteria require that persuasive evidence of an arrangement exists, the fees are fixed or determinable, collection of the resulting receivable is probable and there is no right of return.

Our agreements with customers and distributors generally do not contain product return rights.

We assess the probability of collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. We generally do not request collateral from our customers. If we determine that collection of a fee is not probable, we will defer the fee and recognize revenue upon receipt of cash.

*Shared Ownership Program*

We also enter into arrangements under our shared ownership program with certain customers. Under the terms of such program, we retain title to our CyberKnife system, while the customer has use of the product. We generally receive a minimum monthly payment and earn additional revenues from the customer based upon their use of the product. We may provide unspecified upgrades to the product during the term of each program when and if available. Upfront, non-refundable payments from the customer are deferred and recognized as revenue over the contractual period. Revenues from our shared ownership program are recorded as they become earned and receivable and are included within shared ownership program revenues in the consolidated statements of operations.

The CyberKnife systems associated with our shared ownership program are recorded within property and equipment and are depreciated over their estimated useful life of seven years.

Depreciation and warranty expense attributable to the CyberKnife shared ownership systems are recorded within cost of our shared ownership program.

*Long-Term Manufacturing Contracts*

We also recognize revenue and cost of revenue related to long-term manufacturing contracts using contract accounting on the percentage-of-completion method in accordance with SOP No. 81-1, Accounting for Performance of Construction-Type and Certain Production-Type Contracts. During the years ended June 30, 2009, 2008, and 2007, contract revenue of $2.4 million, $1.0 million, and $0, respectively, was recorded with related costs of $2.4 million, $943,000, and $0, respectively. We recognize any loss provisions from the total contract in the period such loss is identified. During the year ended June 30, 2009, increases in projected costs to complete were sufficient to create a loss position for certain projects. As such, an estimated loss provision of $97,000 was recognized during the year ended June 30, 2009. No loss provision was recognized during the years ended June 30, 2008 or 2007. As of June 30, 2009 and 2008, costs of $0 and $1.0 million, respectively, were recorded in deferred cost of revenue related to long-term manufacturing contracts.

***Deferred Revenue and Deferred Cost of Revenue***

Deferred revenue consists of deferred product revenue, deferred shared ownership revenue, deferred service revenue and deferred other revenue. Deferred product revenue arises from the timing differences between the shipment of products and satisfaction of all revenue recognition criteria consistent with our revenue recognition policy. Deferred shared ownership revenue results from the receipt of advance payments of monthly minimum lease payments, which will be recognized ratably over the term of the shared ownership program. Deferred service revenue results from the advance payment for services to be delivered over a period of time, usually one year. Service revenue is recognized ratably over the service period. Deferred other revenue results primarily from the Japan upgrade services programs and is due to timing difference between the receipt of cash payments for those upgrades and final delivery to the end user customer. Deferred cost of revenue consists of the direct costs associated with the manufacture of units, direct service costs and deferred costs associated with the Japan upgrade services for which the revenue has been deferred in accordance with our revenue recognition policies. Deferred revenue, and associated deferred cost of revenue, expected to be realized within one year are classified as current liabilities and current assets, respectively.

***Stock-Based Compensation***

Effective July 1, 2006, we adopted SFAS 123R using the modified prospective method under which compensation cost is recognized beginning with the effective date (a) based on the requirements of SFAS 123R for all share-based payments granted or modified after the effective date and (b) based on the previous requirements of SFAS 123 for all awards granted to employees prior to the effective date of SFAS 123R that remain unvested on the effective date. SFAS 123R also requires the benefits of tax deductions in excess of recognized compensation cost be reported as a financing cash flow, rather than as an operating cash flow as required under previous guidance.

SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary in subsequent periods if actual forfeitures differ from initial estimates. For the year ended June 30, 2007, we recorded a cumulative effect of a change in accounting principle of $838,000, net of tax of $0, related to the adoption of SFAS 123R since we had previously adjusted stock-based compensation expense at the time forfeitures occurred in accordance with SFAS 123. The cumulative effect of this change in accounting reflects estimated forfeitures related to periods prior to July 1, 2006.

Under SFAS 123R, we estimated the fair value of each option award on the date of grant using the Black-Scholes option-pricing model using the assumptions noted in the table below. Expected volatility is based on the historical volatility of a peer group of publicly traded companies. The expected term of options is based upon the vesting term (i.e., 25% on the first anniversary of the vesting start

date and 36 equal monthly installments thereafter) and on its partial life history. The risk-free rate for the expected term of the option is based on the U.S. Treasury Constant Maturity rate. During the years ended June 30, 2009, 2008 and 2007, the estimated fair values of the stock options granted were calculated at each date of grant using the Black-Scholes option pricing model, using fair values of common stock between $4.67 and $28.47 per share. Following our IPO, the fair value of our common stock is determined by its closing market price as published by the Nasdaq Global Market. During the years ended June 30, 2009, 2008 and 2007, we recognized $10.3 million, $12.2 million and $10.5 million, respectively, of stock-based compensation expense for stock options granted to employees. The weighted-average assumptions used to value options granted during the years ended June 30, 2009, 2008 and 2007 were as follows:

| | Year ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Risk-free interest rate | 2.58% | 3.65% | 4.89% |
| Dividend yield | — | — | — |
| Expected life | 6.25 | 6.25 | 6.25 |
| Expected volatility | 64.3% | 60.3% | 74.8% |

Stock-based compensation expense related to stock options granted to non-employees is recognized as the stock options are earned in accordance with SFAS 123 and Emerging Issues Task Force No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. We believe that the fair value of the stock options is more reliably measurable than the fair value of the services received. The estimated fair value of the stock options granted is calculated using the Black-Scholes option pricing model, as prescribed by SFAS 123, using fair values of common stock and weighted-average assumptions during the year of grant. We recognized $0, $114,000, and $171,000 during the years ended June 30, 2009, 2008, and 2007, respectively, of stock-based compensation expense for stock options granted to non-employees.

In January 2007, in connection with our IPO, the Board of Directors approved the 2007 Incentive Award Plan, or 2007 Plan, and the ESPP. The ESPP is deemed compensatory and compensation costs are accounted for under SFAS 123R.

Under the ESPP, qualified employees are entitled to purchase common stock at 85% of the fair market value on specified dates. During the years ended June 30, 2009, 2008 and 2007 the estimated fair value of ESPP shares was calculated at the date of grant using the Black-Scholes option pricing model, using fair values of common stock between $4.06 per share and $18.00 per share. Expected volatility is based on the historical volatility of a peer group of publicly traded companies. The expected term is based upon the offering period of the ESPP. The risk-free rate for the expected term of the ESPP option is based on the U.S. Treasury Constant Maturity rate. For the years ended June 30, 2009, 2008 and 2007, we recognized $998,000, $1.0 million and $441,000 of compensation expense related to our ESPP, respectively. The following weighted-average assumptions were used during the years ended June 30, 2009, 2008 and 2007:

| | Year ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Risk-free interest rate | 0.42% | 3.07% | 5.16% |
| Dividend yield | — | — | — |
| Expected life | 0.50 | 0.50 | 0.75 |
| Expected volatility | 84.2% | 59.8% | 49.9% |

In connection with the 2007 Plan, we issued restricted stock units, or RSUs, and recognized $4.1 million, $4.0 million and $1.5 million of stock-based compensation expense, net of forfeitures for restricted stock units granted during the years ended June 30, 2009, 2008 and 2007, at a weighted-average grant date fair value of $6.49, $14.55 and $28.17, respectively.

Excess tax benefits from tax deductions for exercised options and disqualifying dispositions, in excess of the deferred tax asset attributable to stock compensation costs for such options are credited to additional paid-in-capital. Realized excess tax benefits for the years ended June 30, 2009, 2008 and 2007 were $0, $419,000 and $0, respectively.

At June 30, 2009 and 2008, $456,000 and $489,000 of capitalized stock-based compensation costs were included as components of inventory and deferred cost of revenue.

***Inventories***

Inventories are stated at the lower of cost (on a first-in, first-out basis) or market. Excess and obsolete inventories are written down based on historical sales and forecasted demand, as judged by management. We determine inventory and product costs, which include allocated production overheads, through use of standard costs.

***Investments***

We account for certain assets in accordance with SFAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115* ("SFAS 159"). SFAS 159 permits entities to choose to measure many financial instruments and certain other items at fair value, with changes in fair value recognized in earnings each reporting period. The election, called the fair value option, will enable entities to achieve an offset accounting effect for changes in fair value of certain related assets and liabilities without having to apply complex hedge accounting provisions. In November 2008, we entered into an agreement ("Rights Agreement") with UBS, which provides us with ARS Rights ("Rights") to sell our ARS at par value to UBS at any time during the period June 30, 2010 through July 2, 2012. These Rights are a separate freestanding instrument accounted for separately from the ARS, and are registered, nontransferable securities accounted for as a put option initially recorded at fair value. Under the Rights Agreement, UBS may, at its discretion, purchase or sell the ARS at any time through July 2, 2012 without prior notice to us and must pay us par value for the ARS within one day of the sale transaction settlement. We agreed to release UBS from certain potential claims related to its marketing and sale of ARS. Additionally, UBS offered us a "no net cost" loan up to the par value of the ARS as determined by UBS until June 30, 2010 and we agreed to release UBS from certain potential claims related to the collateralized ARS in certain specified circumstances. During the three months ended December 31, 2008, we elected fair value accounting for the put option recorded in connection with the Rights Agreement. This election was made in order to mitigate volatility in earnings caused by accounting for the purchased put option and underlying ARS under different methods. The initial election of fair value led to a $3.3 million gain included in "Other income, net" for the put option asset, which is recorded in long-term trading securities.

Due to our entering into this Rights Agreement with UBS and enabling UBS to sell the ARS at any time, the ARS previously reported as available-for-sale have been transferred to trading securities and are classified as long-term trading securities on the condensed consolidated balance sheet as of June 30, 2009. Due to the change in classification to trading securities at the time of entering into the Rights Agreement, we transferred the previously accumulated unrealized loss of $3.8 million from "Accumulated other comprehensive income (loss)" to "Other income, net" and recorded additional unrealized gains of $2.1 million relating to the change in fair value of the trading securities from November 2008 through June 30, 2009. At June 30, 2009, the total fair value of the ARS was $20.7 million, net of $1.7 million of unrealized losses.

Additionally, we recorded unrealized gains of $3.3 million related to the fair value of the put option at the time we entered into the Rights Agreement and recorded additional unrealized losses relating to the change in fair value of the put option from November 2008 through June 30, 2009 of $2.0 million, for a total fair value of the put option of $1.3 million as of June 30, 2009. During the year ended June 30, 2009, the $1.7 million unrealized loss in fair value of the ARS and the $2.0 million of unrealized loss on the put option, partially offset by the $3.3 million gain recognized on the put option, resulted in a net $319,000 decrease to "Other income, net".

We account for investments in accordance with SFAS 157, *Fair Value Measurements* ("SFAS 157"). In February 2008, the FASB issued FSP FAS 157—2 *Effective Date of FASB Statement 157* ("FSP FAS 157-2"), which provided a one year deferral of the effective date of SFAS 157 for non-financial assets and non-financial liabilities, except those that are recognized or disclosed in the financial statements at fair value at least annually. Therefore, we adopted the provisions of SFAS 157 with respect to its financial assets and liabilities only. SFAS 157 defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles and enhances disclosures about fair value measurements. Fair value is defined under SFAS 157 as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value under SFAS 157 must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

*Level 1*—Unadjusted quoted prices that are available in active markets for the identical assets or liabilities at the measurement date.

*Level 2*—Other observable inputs available at the measurement date, other than quoted prices included in Level 1, either directly or indirectly, including:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets in non-active markets;
- Inputs other than quoted prices that are observable for the asset or liability; and
- Inputs that are derived principally from or corroborated by other observable market data.

*Level 3*—Unobservable inputs that cannot be corroborated by observable market data and reflect the use of significant management judgment. These values are generally determined using pricing models for which the assumptions utilize management's estimates of market participant assumptions.

The adoption of SFAS 157 did not have a material impact on our results of operations and financial condition.

***Provision for Income Taxes***

Estimates and significant management judgment are required in the calculation of certain tax liabilities and in the determination of the recoverability of certain deferred tax assets, which arise from temporary differences and carryforwards. Due to uncertainties related to our ability to realize our deferred tax assets, we record a valuation allowance equal to the amount of our net domestic deferred tax assets. If we subsequently determine that it is more likely than not we will be able to realize a portion or the full amount of deferred tax assets, we will record an adjustment to the deferred tax asset valuation allowance as a credit to earnings in the period such determination is made.

**Recent Accounting Pronouncements**

In June 2009, the FASB issued SFAS No. 166, *Accounting for Transfers of Financial Assets, an amendment to SFAS No. 140*. The new standard eliminates the concept of a "qualifying special-purpose entity," changes the requirements for derecognizing financial assets, and requires additional disclosures in order to enhance information reported to users of financial statements by providing greater transparency about transfers of financial assets, including securitization transactions, and an entity's continuing involvement in and exposure to the risks related to transferred financial assets. SFAS No. 166 is effective for fiscal years beginning after November 15, 2009. We will adopt SFAS No. 166 in fiscal 2011 and are evaluating the impact it will have to our consolidated financial statements.

In May 2009, the FASB issued SFAS No. 165, *Subsequent Events*. This standard is intended to establish general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. Specifically, this standard sets forth the period after the balance sheet date during which management of a reporting entity should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which an entity should recognize events or transactions occurring after the balance sheet date in its financial statements, and the disclosures that an entity should make about events or transactions that occurred after the balance sheet date. SFAS No. 165 is effective for fiscal years and interim periods ending after June 15, 2009 and applied prospectively. The adoption of SFAS No. 165 did not have a material impact on our consolidated financial statements.

In April 2009, the FASB issued FASB Staff Position ("FSP") FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly* ("FSP FAS 157-4"). FSP FAS 157-4 provides guidance on (1) estimating the fair value of an asset or liability when the volume and level of activity for the asset or liability have significantly decreased and (2) identifying transactions that are not orderly. This FSP is effective for the first reporting period (interim or annual) ending after June 15, 2009, with earlier application permitted. The adoption of FSP FAS 157-4 did not have a material impact on our consolidated financial statements.

Also in April 2009, the FASB issued FSP FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments* ("FSP FAS 115-2"). FSP FAS 115-2 requires entities to initially apply the provisions of the standard to previously other than temporarily impaired debt securities (debt securities that the Company does not intend to sell and that the Company is not more likely than not required to sell before recovery), existing as of the date of initial adoption, by making a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. This FSP is effective for the first reporting period (interim or annual) ending after June 15, 2009, with earlier application permitted. The adoption of FSP FAS 115-2 did not have a material impact on our consolidated financial statements.

Also in April 2009, the FASB issued FSP FAS 107-1 and APB 28-1, *Interim Disclosures About Fair Value of Financial Instruments* ("FSP FAS 107-1"). FSP FAS 107-1 expands the fair value disclosures required for all financial instruments within the scope of FASB Statement No. 107, *Disclosures About Fair Value of Financial Instruments* ("FAS 107"), to interim periods. It also requires entities to disclose

the method(s) and significant assumptions used to estimate the fair value of financial instruments in financial statements on an interim and annual basis and to highlight any changes from prior periods. This FSP is effective for the first reporting period (interim or annual) ending after June 15, 2009, with earlier application permitted. The adoption of FSP FAS 107-1 did not have a material impact on our consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "*Business Combinations*" ("*SFAS 141R*"). SFAS 141R establishes principles and requirements for recognizing and measuring assets acquired, liabilities assumed and any noncontrolling interests in the acquiree in a business combination. SFAS 141R also provides guidance for recognizing and measuring goodwill acquired in a business combination; requires purchased in-process research and development ("*IPR&D*") to be capitalized at fair value as intangible assets at the time of acquisition; requires acquisition-related expenses and restructuring costs to be recognized separately from the business combination; expands the definition of what constitutes a business; and requires the acquirer to disclose information that users may need to evaluate and understand the financial effect of the business combination. SFAS 141R was effective on a prospective basis and will impact business combination transactions for which the acquisition date occurs after December 15, 2008. Depending on the nature and magnitude of our future business combination transactions, SFAS 141R may have a material impact on our consolidated financial position and/or results of operations.

The FASB also issued FSP FAS 141(R)-1, *Accounting for Assets Acquired and Liabilities Assumed in a Business Combination That Arise From Contingencies* ("FSP FAS 141(R)-1") in April 2009. Under the FSP, an acquirer is required to recognize at fair value an asset acquired or a liability assumed in a business combination that arises from a contingency if the acquisition-date fair value of that asset or liability can be determined during the measurement period. If the acquisition-date fair value cannot be determined, then the acquirer follows the recognition criteria in FASB Statement No. 5, *Accounting for Contingencies,* and FASB Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss—an interpretation of FASB Statement No. 5,* to determine whether the contingency should be recognized as of the acquisition date or after it. This FSP is effective for business combinations whose acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. Depending on the nature and magnitude of our future business combination transactions, SFAS 141(R)-1 may have a material impact on our consolidated financial statements.

In December 2008, the FASB issued FASB Staff Position ("FSP") FAS 140-4 and Financial Interpretations ("FIN") 46(R)-8, *Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interest is in Variable Interest Entities* ("FSP FAS 140-4"). This disclosure-only FSP improves the transparency of transfers of financial assets and an enterprise's involvement with variable interest entities, including qualifying special-purpose entities. This FSP is effective for the first reporting period (interim or annual) ending after December 15, 2008, with earlier application encouraged. The adoption of FSP FAS 140-4 and FIN 46(R)-8 did not have a material impact on our consolidated financial statements.

In October 2008, the FASB issued FSP No. FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active* ("FSP FAS 157-3"). FSP FAS 157-3 provides examples to illustrate key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. FSP FAS 157-3 was effective upon issuance and did not have a material impact on our consolidated financial statements.

In April 2008, the FASB issued FSP FAS 142-3, *Determination of the Useful Life of Intangible Assets* ("FSP FAS 142-3"), which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of intangible assets under SFAS No. 142, *Goodwill and Other Intangible Assets* ("SFAS 142"). The intent of this FSP is to improve the consistency between the useful life of a recognized intangible asset under SFAS 142 and the period of the expected cash flows used to measure the fair value of the asset under SFAS No. 141 (revised 2007), *Business*

*Combinations* ("SFAS 141R"), and other U.S. generally accepted accounting principles. FSP FAS 142-3 is effective for financial statements issued for fiscal years and interim periods beginning after December 15, 2008. The adoption of FSP FAS 142-3 did not have a material impact on our consolidated financial statements.

In March 2008, the FASB issued SFAS No. 161,*Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133* ("SFAS 161"). SFAS 161 requires enhanced disclosures regarding derivatives and hedging activities, including: (a) the manner in which an entity uses derivative instruments; (b) the manner in which derivative instruments and related hedged items are accounted for under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*; and (c) the effect of derivative instruments and related hedged items on an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. The adoption of SFAS 161 did not have a material impact on our consolidated financial statements.

In December 2007, the FASB issued SFAS No. 160,*Noncontrolling Interests in Consolidated Financial Statements—An Amendment of ARB No. 51* ("SFAS 160"). SFAS 160 amends Accounting Research Bulletin No. 51,*Consolidated Financial Statements* ("ARB 51"), to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement also amends certain of ARB 51's consolidation procedures for consistency with the requirements of SFAS 141R. In addition, SFAS 160 also includes expanded disclosure requirements regarding the interests of the parent and its noncontrolling interest. The provisions of SFAS 160 are effective for fiscal years beginning after December 15, 2008. Earlier adoption is prohibited. We determined that the adoption of SFAS 160 will not have a material impact on our consolidated financial statements.

## Item 7A. QUANTITATIVE & QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We do not utilize derivative financial instruments, derivative commodity instruments or other market risk sensitive instruments, positions or transactions.

For the year ended June 30, 2009, all of our executed sales contracts were denominated in U.S. dollars, with the exception of three sales contracts: one denominated in Euros, one in British Pounds and one in Swiss Francs. Future fluctuations in the value of the U.S. dollar may affect the price competitiveness of our products outside the United States. For direct sales outside the United States it is likely we will sell in the local currency, which could expose us to additional foreign currency risks, including changes in currency exchange rates. Some of our commissions related to sales of the CyberKnife system are payable in Euros. To the extent that management can predict the timing of payments under these or contracts we enter into that are denominated in foreign currencies, we may engage in hedging transactions to mitigate such risks in the future.

***Interest Rate Risk***

At June 30, 2009, we had $36.8 million of cash and cash equivalents and $121.9 million invested in other financial instruments. Our earnings are affected by changes in interest rates due to the impact those changes have on interest income generated from our cash and investment balances. We believe that while the instruments we hold are subject to changes in the financial standing of the issuer of such securities, and except as described below, we are not subject to any material risks arising from changes in interest rates, foreign currency exchange rates, commodity prices, equity prices or other market changes that affect market risk sensitive instruments. However, should interest rates increase, the market value of our investments may decline, which could result in a realized loss if we are forced to sell before scheduled maturity. If overall interest rates had risen by 100 basis points, the fair value of our net investment position at June 30, 2009 would have decreased by approximately $803,000, assuming consistent levels.

***Credit Risk***

The $22.4 million of ARS we held as of June 30, 2009 failed at auction and have continued to fail at auction due to sell orders exceeding buy orders. As of June 30, 2009, we have written down our ARS from their par value of $22.4 million to the estimated fair value of approximately $20.7 million. The $1.7 million decline in market value was recorded to other expense during the year ended June 30, 2009 in conjunction with our decision to reclassify the ARS from the available-for-sale category to the trading category. In addition, we entered into a settlement agreement with UBS whereby we have the option to sell the ARS at par value to UBS between June 30, 2010 and July 1, 2012. As part of the settlement with UBS, we have entered into a "no net cost" secured line of credit agreement with UBS. The secured line of credit allows borrowings as determined by UBS. The available borrowings afford us additional cash liquidity until we exercise our option to sell at par value, expected to be on or about June 30, 2010. As of June 30, 2009, no borrowings are outstanding on this line of credit. Based on our ability to access our cash and cash equivalents, our expected operating cash flows and our other sources of cash, we do not anticipate the current lack of liquidity on these investments to have a material impact on our financial condition or results of operations.

**Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

**ACCURAY INCORPORATED**

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders
Accuray Incorporated

We have audited the accompanying consolidated balance sheets of Accuray Incorporated and subsidiaries (collectively, "the Company") as of June 30, 2009 and 2008, and the related consolidated statements of operations, stockholders' equity (deficiency), and cash flows for each of the three years in the period ended June 30, 2009. Our audits of the basic financial statements included the financial statement schedule listed in the index appearing under Item 15(a)(2). These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Accuray Incorporated and subsidiaries as of June 30, 2009 and 2008, and the results of their operations and their cash flows for each of the three years in the period ended June 30, 2009 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Accuray Incorporated's internal control over financial reporting as of June 30, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and our report dated September 8, 2009 expressed an unqualified opinion thereon.

/s/ GRANT THORNTON LLP
San Francisco, California
September 8, 2009

Table of Contents

## Accuray Incorporated

## Consolidated Balance Sheets

## (in thousands, except share and per share amounts)

| | June 30, | |
|---|---|---|
| | 2009 | 2008 |
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 36,835 | $ 36,936 |
| Restricted cash | 527 | 4,830 |
| Short-term available-for-sale securities | 64,634 | 85,536 |
| Accounts receivable, net of allowance for doubtful accounts of $484 and $27 at June 30, 2009 and 2008, respectively | 36,427 | 33,918 |
| Inventories | 28,909 | 23,047 |
| Prepaid expenses and other current assets | 6,186 | 6,431 |
| Deferred cost of revenue—current | 18,984 | 31,667 |
| Total current assets | 192,502 | 222,365 |
| Long-term available-for-sale securities | 35,245 | 37,014 |
| Long-term trading securities | 22,007 | — |
| Deferred cost of revenue—noncurrent | 2,933 | 11,724 |
| Property and equipment, net | 15,066 | 17,140 |
| Goodwill | 4,495 | 4,495 |
| Intangible assets, net | 668 | 926 |
| Other assets | 1,470 | 1,340 |
| Total assets | $ 274,386 | $ 295,004 |
| **Liabilities and stockholders' equity** | | |
| Current liabilities: | | |
| Accounts payable | $ 14,941 | $ 12,962 |
| Accrued compensation | 10,119 | 7,504 |
| Other accrued liabilities | 6,069 | 4,369 |
| Customer advances—current | 13,185 | 22,331 |
| Deferred revenue—current | 68,105 | 87,455 |
| Total current liabilities | 112,419 | 134,621 |
| Long-term other liabilities | 288 | — |
| Customer advances—noncurrent | — | 2,900 |
| Deferred revenue—noncurrent | 7,777 | 26,720 |
| Total liabilities | 120,484 | 164,241 |
| Commitments and contingencies (Note 8) | | |
| Stockholders' equity | | |
| Preferred stock, $0.001 par value; authorized: 5,000,000 shares; no shares issued and outstanding | — | — |
| Common stock, $0.001 par value; authorized: 100,000,000 shares; issued: 58,783,547 and 56,719,864 shares at June 30, 2009 and 2008, respectively; outstanding: 56,643,529 and 54,579,846 shares at June 30, 2009 and 2008, respectively | 57 | 55 |
| Additional paid-in capital | 273,946 | 252,901 |
| Accumulated other comprehensive income (loss) | 416 | (1,067) |
| Accumulated deficit | (120,517) | (121,126) |
| Total stockholders' equity | 153,902 | 130,763 |
| Total liabilities and stockholders' equity | $ 274,386 | $ 295,004 |
| Assets and liabilities include related party transaction amounts as follows: | | |

| | | | | |
|---|---|---|---|---|
| Accounts receivable | $ | 9 | $ | — |
| Deferred cost of revenue—current | $ | — | $ | 11 |
| Deferred revenue—current | $ | 209 | $ | 231 |

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

Table of Contents

## Accuray Incorporated

## Consolidated Statements of Operations

## (in thousands, except per share amounts)

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Net revenue: | | | |
| Products | $ 159,257 | $ 152,374 | $ 110,320 |
| Shared ownership programs | 3,651 | 10,262 | 10,090 |
| Services | 66,344 | 38,808 | 16,860 |
| Other | 4,346 | 8,937 | 3,182 |
| Total net revenue | 233,598 | 210,381 | 140,452 |
| Cost of revenue: | | | |
| Cost of products | 68,904 | 67,183 | 43,363 |
| Cost of shared ownership programs | 775 | 2,517 | 2,637 |
| Cost of services | 44,591 | 26,865 | 12,269 |
| Cost of other | 4,038 | 6,864 | 2,144 |
| Total cost of revenue | 118,308 | 103,429 | 60,413 |
| Gross profit | 115,290 | 106,952 | 80,039 |
| Operating expenses: | | | |
| Selling and marketing | 45,493 | 42,726 | 37,889 |
| Research and development | 35,992 | 32,880 | 26,775 |
| General and administrative | 36,223 | 32,280 | 23,915 |
| Total operating expenses | 117,708 | 107,886 | 88,579 |
| Loss from operations | (2,418) | (934) | (8,540) |
| Other income, net | 3,082 | 7,184 | 3,530 |
| Income (loss) before provision for income taxes and cumulative effect of change in accounting principle | 664 | 6,250 | (5,010) |
| Provision for income taxes | 55 | 867 | 1,444 |
| Income (loss) before cumulative effect of change in accounting principle | 609 | 5,383 | (6,454) |
| Cumulative effect of change in accounting principle, net of tax of $0 | — | — | 838 |
| Net income (loss) | $ 609 | $ 5,383 | $ (5,616) |
| Net income (loss) per share: | | | |
| Basic | | | |
| Income (loss) before cumulative effect of change in accounting principle | $ 0.01 | $ 0.10 | $ (0.21) |
| Cumulative effect of change in accounting principle | — | — | 0.03 |
| Basic net income (loss) per share | $ 0.01 | $ 0.10 | $ (0.18) |
| Diluted | | | |
| Income (loss) before cumulative effect of change in accounting principle | $ 0.01 | $ 0.09 | $ (0.21) |
| Cumulative effect of change in accounting principle | — | — | 0.03 |
| Diluted net income (loss) per share | $ 0.01 | $ 0.09 | $ (0.18) |
| Weighted average common shares outstanding used in computing net income (loss) per share: | | | |
| Basic | 55,413 | 54,531 | 30,764 |
| Diluted | 58,729 | 60,434 | 30,764 |
| Cost of revenue, selling and marketing, research and development, and general and administrative expenses include stock-based compensation charges as follows: | | | |
| Cost of revenue | $ 2,285 | $ 1,858 | $ 1,205 |

| | | | |
|---|---|---|---|
| Selling and marketing | $ 3,441 | $ 4,197 | $ 3,958 |
| Research and development | $ 3,190 | $ 3,059 | $ 2,448 |
| General and administrative | $ 6,545 | $ 7,785 | $ 5,016 |
| Revenue and cost of revenue include related party transaction amounts as follows: | | | |
| Net revenue: | | | |
| Products | $ 618 | $ — | $ 3,694 |
| Services | $ 968 | $ 1,182 | $ 2,597 |
| Other | $ — | $ 787 | $ 2,795 |
| Cost of revenue: | | | |
| Cost of products | $ 31 | $ 59 | $ 1,098 |
| Cost of services | $ 608 | $ 22 | $ 1,029 |
| Cost of other | $ — | $ 528 | $ 2,144 |

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

**Accuray Incorporated**
**Consolidated Statement of Stockholders' Equity (Deficiency)**
**(in thousands, except share Amounts)**

| | Common Stock | | Additional Paid-In Capital | Notes Receivable from Stockholder | Deferred Stock-Based Compensation | Accumulated Other Comprehensive Income (Loss) | Accumulated Deficit | Total Stockholders' Equity (Deficiency) |
|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | | | | | | |
| **Balances at June 30, 2006** | 16,243,150 | $ 13,276 | $ 43,988 | $ (206) | $ (17,272) | $ — | $ (120,641) | $ (80,855) |
| Conversion of redeemable preferred stock to common stock | 25,186,285 | 25 | 27,479 | — | — | — | — | 27,504 |
| Conversion of common stock warrants | 495,833 | — | — | — | — | — | — | — |
| Proceeds from initial public offering, net of expenses | 10,399,997 | 10 | 170,555 | — | — | — | — | 170,565 |
| Reclassification of par value for Delaware reincorporation | | (13,260) | 13,260 | — | — | — | — | — |
| Exercise of stock options, net | 1,538,004 | 2 | 1,739 | — | — | — | — | 1,741 |
| Stock repurchased for settlement of notes receivable | (64,626) | — | (454) | 206 | — | — | — | (248) |
| Reversal of deferred stock-based compensation upon adoption of SFAS 123R | — | — | (17,272) | — | 17,272 | — | — | — |
| Stock-based compensation | — | — | 12,456 | — | — | — | — | 12,456 |
| Compensation expense related to options issued to non-employees | — | — | 171 | — | — | — | — | 171 |
| Income tax benefits from employee stock plans | — | — | 553 | — | — | — | — | 553 |
| Cumulative effect of change in accounting principle | — | — | (838) | — | — | — | — | (838) |
| Comprehensive loss: | | | | | | | | |
| Net loss | — | — | — | — | | — | (5,616) | (5,616) |
| Cumulative translation adjustment | — | — | — | — | — | 10 | — | 10 |
| Total comprehensive loss | | | | | | | | (5,606) |
| **Balances at June 30, 2007** | 53,798,643 | 53 | 251,637 | — | — | 10 | (126,257) | 125,443 |
| Exercise of stock options, net | 2,564,269 | 3 | 4,352 | — | — | — | — | 4,355 |
| Issuance of common stock under employee stock purchase plan | 265,349 | 1 | 2,957 | — | — | — | — | 2,958 |
| Issuance of restricted stock | 91,603 | — | — | — | — | — | — | — |
| Stock-based compensation | — | — | 17,274 | — | — | — | — | 17,274 |
| Stock repurchased for cash | (2,140,018) | (2) | (23,979) | — | — | — | — | (23,981) |
| Compensation expense related to options issued to non-employees | — | — | 114 | — | — | — | — | 114 |
| Income tax benefits from employee stock plans | — | — | 546 | — | — | — | — | 546 |
| Adjustments to initially apply FIN 48 | — | — | — | — | — | — | (252) | (252) |
| Comprehensive income: | | | | | | | | |
| Net income | — | — | — | — | — | — | 5,383 | 5,383 |
| Cumulative translation adjustment | — | — | — | — | — | (49) | — | (49) |
| Unrealized loss on investments, net | — | — | — | — | — | (1,028) | — | (1,028) |
| Total comprehensive income | | | | | | | | 4,306 |
| **Balances at June 30, 2008** | 54,579,846 | 55 | 252,901 | — | — | (1,067) | (121,126) | 130,763 |
| Exercise of stock options, net | 1,450,120 | 2 | 4,106 | — | — | — | — | 4,108 |
| Issuance of common stock under employee stock purchase plan | 437,005 | — | 1,667 | — | — | — | — | 1,667 |
| Issuance of restricted stock | 176,558 | — | | — | — | — | — | — |
| Stock-based compensation | — | — | 15,403 | — | — | — | — | 15,403 |
| Income tax charge from employee stock plans | — | — | (131) | — | — | — | — | (131) |
| Comprehensive income: | | | | | | | | |
| Net income | — | — | — | — | — | — | 609 | 609 |
| Cumulative translation adjustment | — | — | — | — | — | (14) | — | (14) |
| Unrealized gain on investments, net | — | — | — | — | — | 1,497 | — | 1,497 |
| Total comprehensive income | | | | | | | | 2,092 |
| **Balances at June 30, 2009** | 56,643,529 | $ 57 | $ 273,946 | $ — | $ — | $ 416 | $ (120,517) | $ 153,902 |

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

## Accuray Incorporated

## Consolidated Statements of Cash Flows

## (in thousands)

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| **Cash Flows From Operating Activities** | | | |
| Net income (loss) | $ 609 | $ 5,383 | $ (5,616) |
| Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities: | | | |
| Depreciation and amortization | 6,651 | 7,688 | 6,246 |
| Stock-based compensation | 15,461 | 16,899 | 12,627 |
| Tax benefit (charge) from stock-based compensation | (131) | 546 | — |
| Excess tax benefit from stock-based compensation | — | (419) | — |
| Realized gain on investments | (30) | (9) | — |
| Unrealized loss on long-term trading securities, net of gain on put option | 393 | — | — |
| Provision for bad debts | 496 | 30 | 2 |
| Loss on write-down of inventories | 2,730 | 760 | 805 |
| Loss on disposal of property and equipment | 342 | 188 | 249 |
| Cumulative effect of change in accounting principle | — | — | (838) |
| Changes in assets and liabilities: | | | |
| Accounts receivable | (2,817) | (23,920) | (936) |
| Inventories | (9,679) | (10,427) | (8,770) |
| Prepaid expenses and other current assets | 26 | 1,233 | (5,061) |
| Deferred cost of revenue | 22,010 | 26,208 | (5,389) |
| Other assets | (113) | 45 | (146) |
| Accounts payable | 1,833 | (1,180) | 9,525 |
| Accrued liabilities | 4,921 | (5,309) | 3,125 |
| Customer advances | (12,216) | 4,283 | (1,495) |
| Deferred revenue | (38,532) | (39,988) | 7,269 |
| Net cash provided by (used in) operating activities | (8,046) | (17,989) | 11,597 |
| **Cash Flows From Investing Activities** | | | |
| Purchases of property and equipment | (4,232) | (5,030) | (7,230) |
| Restricted cash | 4,303 | (4,830) | 1 |
| Purchase of investments | (155,934) | (177,651) | (283) |
| Sale and maturity of investments | 157,732 | 54,089 | — |
| Net cash provided by (used in) investing activities | 1,869 | (133,422) | (7,512) |
| **Cash Flows From Financing Activities** | | | |
| Proceeds from issuance of common stock | 4,108 | 4,355 | 1,741 |
| Proceeds from employee stock purchase plan | 1,667 | 2,958 | — |
| Stock repurchases | — | (23,981) | — |
| Proceeds from intial public offering, net of issuance costs | — | — | 170,565 |
| Excess tax benefit from stock-based compensation | — | 419 | 553 |
| Net cash provided by (used in) financing activities | 5,775 | (16,249) | 172,859 |
| Effect of exchange rate changes on cash | 301 | (234) | 30 |
| Net increase (decrease) in cash and cash equivalents | (101) | (167,894) | 176,974 |
| Cash and cash equivalents at beginning of period | 36,936 | 204,830 | 27,856 |
| Cash and cash equivalents at end of period | 36,835 | $ 36,936 | $204,830 |
| **Supplemental Disclosure of Cash Flow Information** | | | |
| Cash paid for interest | $ — | $ 223 | $ — |
| Income taxes paid | $ 194 | $ 1,264 | $ 138 |
| **Non-cash Investing and Financing Activities** | | | |
| Stock repurchased for settlement of notes receivable | $ — | $ — | $ 206 |
| Cash flows include related party transaction amounts as follows: | | | |
| Accounts receivable | $ (9) | $ — | $ (1) |
| Deferred cost of revenue | $ 11 | $ 7,082 | $ 3,080 |
| Customer advances | $ — | $ (5,251) | $ (990) |
| Deferred revenue | $ (22) | $ (14,875) | $ (6,723) |

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

**Accuray Incorporated**

**Notes to Consolidated Financial Statements**

## 1. Description of Business

### Organization

Accuray Incorporated (the "Company") was incorporated in California in December 1990 and commenced operations in January 1992. The Company was reincorporated in Delaware in February 2007 prior to the completion of its initial public offering ("IPO"). The Company designs, develops and sells the CyberKnife system, an image-guided robotic radiosurgery system used for the treatment of solid tumors anywhere in the body.

The Company has formed eleven wholly-owned subsidiaries: Accuray International SARL, located in Geneva, Switzerland, Accuray Europe SAS, located in Paris, France, Accuray UK Ltd, located in London, United Kingdom, Accuray Asia Limited, located in Hong Kong, SAR, Accuray Japan KK, located in Tokyo, Japan, Accuray Spain, S.L.U., located in Madrid, Spain, Accuray Medical Equipment (India) Private Ltd., located in New Delhi, India, Accuray Medical Equipment (SEA) Private Limited, located in Singapore, Accuray Medical Equipment (Rus) LLC, located in Moscow, Russia, Accuray Medical Equipment GmbH, located in Munich, Germany and Accuray Tibbi Cihazlar Ve Malzemeler Ithalat Ihracat Anonim Sirketi, located in Istanbul, Turkey. The purpose of these subsidiaries is to market the Company's products in the various countries in which they are located.

### Initial Public Offering

In February 2007, the Company completed its initial public offering ("IPO") of common stock in which a total of 18,399,998 shares were sold and issued, including 8,000,000 shares sold by selling to stockholders, at an issue price of $18.00 per share. The Company raised a total of $187.2 million in gross proceeds from the IPO, or approximately $170.6 million in net proceeds after deducting underwriting discounts and commissions of $13.1 million and other offering costs of approximately $3.5 million. Upon the closing of the IPO, all shares of convertible preferred stock outstanding and warrants outstanding automatically converted into 25,186,285 and 495,833 shares of common stock, respectively.

## 2. Summary of Significant Accounting Policies

### Fiscal Year

On October 1, 2006, the Company prospectively changed its fiscal calendar to a 52- or 53- week period. The Company's fiscal year ends on the Saturday closest to June 30$^{th}$, so that in a 52 week period, each fiscal quarter consists of 13 weeks. The additional week in a 53-week year is added to the fourth quarter, making such quarter consist of 14 weeks. Fiscal years 2009, 2008, and 2007 are each comprised of 52 weeks. For ease of presentation purposes, the consolidated financial statements and notes refer to June 30 as the Company's fiscal year end.

On June 23, 2009, the Company changed its fiscal year end from the Saturday closest to June 30, to June 30. Beginning in the first quarter of fiscal 2010, the Company's fiscal quarters will end on the calendar quarter ends as follows: September 30, December 31, March 31.

### Basis of Presentation and Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries and the Company's variable interest entity, Morphormics, Inc. ("Morphormics"). The Company is considered the primary beneficiary of Morphormics as defined in Financial Accounting

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

Standards Board ("FASB") Interpretation No. 46 (revised 2003), *Consolidation of Variable Interest Entities* ("FIN 46R"). All significant inter-company transactions and balances have been eliminated in consolidation.

**Use of Estimates**

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures at the date of the financial statements. Key estimates and assumptions made by the Company relate to stock-based compensation, valuation allowances for deferred tax assets, estimate of allowance for doubtful accounts, valuation of excess and obsolete inventories, impairment of long-lived assets and goodwill, deferred revenue and deferred cost of revenue. Actual results could differ materially from those estimates.

**Foreign Currency**

The Company's international subsidiaries use their local currencies as their functional currencies. For those subsidiaries, assets and liabilities are translated at exchange rates in effect at the balance sheet date and income and expense accounts at average exchange rates during the year. Resulting translation adjustments are excluded from the determination of net income (loss) and are recorded in accumulated other comprehensive income (loss) as a separate component of stockholders' equity (deficiency). Net foreign currency exchange transaction gains or losses are included as a component of other income, net, in our Consolidated Statements of Operations.

**Cash and Cash Equivalents**

The Company considers all highly liquid investments with original maturities of three months or less on the date of purchase to be cash equivalents. Cash equivalents consist of amounts invested in highly liquid investment accounts and money market accounts and amounted to $19.5 million and $30.7 million at June 30, 2009 and 2008, respectively. Cash and cash equivalent balances denominated in a foreign currency amounted to $3.4 million and $1.0 million at June 30, 2009 and 2008, respectively.

**Restricted Cash**

Restricted cash includes amounts deposited as collateral per the terms of contracts with customers requiring that deposited cash amounts be secured via letters of credit until delivery of the CyberKnife unit occurs. Restricted cash amounts were $527,000 and $4.8 million at June 30, 2009 and 2008, respectively.

**Marketable Securities**

The Company's short-term available-for-sale securities on the consolidated balance sheets include fixed-income securities, commercial paper, term notes and marketable debt securities. All marketable securities designated as available-for-sale are reported at estimated fair value, with unrealized gains and losses recorded in stockholders' equity and included in accumulated other comprehensive income (loss). Realized gains and losses on the sale of available-for-sale marketable securities are recorded in other income, net. The cost of available-for-sale marketable securities sold is based on the specific

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

identification method. Available-for-sale marketable securities with original maturities greater than approximately three months and remaining maturities less than one year are classified as short-term available-for-sale marketable securities. Long-term available-for-sale marketable securities include U.S. corporate debt securities with remaining maturities of greater than one year.

The Company's long-term trading securities on the condensed consolidated balance sheets consist of (i) auction-rate securities ("ARS") that are secured by pools of student loans guaranteed by state regulated higher education agencies and reinsured by the U.S. Department of Education and (ii) a put option held in respect to these ARS (see Note 3). Changes in the fair value of the Company's trading securities are reported in other income, net.

Interest, dividends, amortization and accretion of purchase premiums and discounts on all of the Company's marketable securities are included in other income, net.

**Other-than-Temporary Impairment Assessment**

The Company regularly reviews all of its investments for other-than-temporary declines in fair value. The review includes but is not limited to (i) the consideration of the cause of the impairment, (ii) the creditworthiness of the security issuers, (iii) the length of time a security is in an unrealized loss position, and (iv) the Company's ability to hold the security for a period of time sufficient to allow for any anticipated recovery in fair value.

**Fair Value of Financial Instruments**

The carrying values of the Company's financial instruments including cash and cash equivalents, marketable securities, restricted cash, accounts receivable and accounts payable are approximately equal to their respective fair values due to the relatively short-term nature of these instruments.

**Concentration of Credit Risk and Other Risks and Uncertainties**

The Company's cash and cash equivalents are mainly deposited with three major financial institutions. At times, deposits in these institutions exceed the amount of insurance provided on such deposits. The Company has not experienced any losses in such accounts and believes that it is not exposed to any significant risk on these balances.

There were no customers that represented more than 10% of revenue for the years ended June 30, 2009, 2008 and 2007. The following summarizes the accounts receivable from customers in excess of 10% of total accounts receivable:

| | As of June 30, | |
|---|---|---|
| | 2009 | 2008 |
| Customer A | — | 10% |
| Customer B | — | 11% |
| Customer C | 10% | — |
| Customer D | — | 23% |
| Customer E | 11% | — |

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

Accounts receivable are typically not collateralized. The Company performs ongoing credit evaluations of its customers and maintains reserves for potential credit losses. Accounts receivable are deemed past due in accordance with the contractual terms of the agreement. Accounts are charged against the allowance for doubtful accounts once collection efforts are unsuccessful. Historically, such losses have been within management's expectations. The Company's allowance for doubtful accounts was $484,000 and $27,000 at June 30, 2009 and 2008, respectively.

The Company is subject to risks common to companies in the medical device industry including, but not limited to: new technological innovations, dependence on key personnel, dependence on key suppliers, protection of proprietary technology, compliance with government regulations, uncertainty about widespread market acceptance of products and potential product liability. The Company's products include components subject to rapid technological change. Certain components used in manufacturing have relatively few alternative sources of supply and establishing additional or replacement suppliers for such components cannot be accomplished quickly. While the Company has ongoing programs to minimize the adverse effect of such uncertainty and considers technological change in estimating its allowances, uncertainty continues to exist.

The products currently under development by the Company may require clearance by the U.S. Food and Drug Administration ("FDA") or other international regulatory agencies prior to commercial sales. There can be no assurance that the Company's products will receive the necessary clearance. Denial or delay of such clearance could have a material adverse impact on the Company.

**Inventories**

Inventories are stated at the lower of cost (on a first-in, first-out basis) or market value. Excess and obsolete inventories are written down based on historical sales and forecasted demand, as judged by management. The Company determines inventory and product costs, which include allocated production overheads, through use of standard costs.

**Revenue Recognition**

The Company earns revenue from the sale of products, the operation of its shared ownership program, and the provision of related services, which include installation services, post-contract customer support ("PCS"), training and consulting. The Company's products and upgrades to those products include software that is essential to the functionality of the products and accordingly, the Company accounts for sales of its products pursuant to Statement of Position ("SOP") No. 97-2, *Software Revenue Recognition* ("SOP 97-2"), as amended, in determining the timing of revenue recognition. The Company records its revenues net of any value added or sales tax. From time to time, the Company introduces customers to third party financing organizations. No amounts received from these third party financing organizations are at risk.

The Company recognizes product revenues for sales of the CyberKnife system, upgrades, components and replacement parts and accessories when there is persuasive evidence of an arrangement, the fee is fixed or determinable, collection of the fee is probable and delivery has occurred as prescribed by SOP 97-2. Payments received in advance of product shipment are recorded as customer advances and are recognized as revenue or deferred revenue upon product shipment or installation.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

For arrangements with multiple elements, the Company allocates arrangement consideration to each element based upon vendor specific objective evidence ("VSOE") of fair value of the respective elements. VSOE of fair value for each element is based upon the Company's standard rates charged for the product or service when such product or service is sold separately or based upon the price established by management having the relevant authority when that product or service is not yet being sold separately. When contracts contain multiple elements, and VSOE of fair value exists for all undelivered elements, the Company accounts for the delivered elements, principally the CyberKnife system, based upon the "residual method" as prescribed by SOP No. 98-9, *Modification of SOP No. 97-2 with Respect to Certain Transactions* ("SOP 98-9"). If VSOE of fair value does not exist for all the undelivered elements, all revenue is deferred until the earlier of: (1) delivery of all elements, or (2) establishment of VSOE of fair value for all remaining undelivered elements.

The Company assesses the probability of collection based on a number of factors, including past transaction history with the customer and the credit-worthiness of the customer. The Company generally does not request collateral from its customers. If the Company determines that collection of a fee is not probable, the Company will defer the fee and recognize revenue upon receipt of cash.

*CyberKnife sales with legacy service plans*

For sales of CyberKnife systems with PCS arrangements that include specified or committed upgrades for which the Company has not established VSOE of fair value, all revenue is deferred. Once all such upgrade obligations have been delivered, all accumulated and deferred revenue is recognized ratably over the remaining life of the PCS arrangement.

Sales of additional upgrades as optional extras prior to the delivery of all originally specified upgrade obligations are considered additional elements of the original arrangement and associated revenues are deferred and accounted for as described above. Sales of additional upgrades after delivery of all specified upgrade obligations, as stated in the original contract, are recognized once all revenue recognition criteria applicable to those arrangements are met.

*CyberKnife sales with nonlegacy service plans*

In fiscal year 2006, the Company began selling CyberKnife systems with PCS contracts that only provide for upgrades when and if they become available. The Company has established VSOE of the fair value of PCS in these circumstances. For arrangements with multiple elements that include the CyberKnife system, installation services, training services and a PCS service agreement, the Company recognizes the CyberKnife system and installation services revenue following installation and acceptance of the system by application of the residual method as prescribed in SOP 98-9 when VSOE of fair value exists for all undelivered elements in the arrangement, including PCS.

*Other revenue—Japan upgrade services*

Other revenue primarily consists of upgrade services revenues related to the sale of specialized services specifically contracted to provide current technology capabilities for units previously sold through a distributor into the Japan market. Some upgrade sales include elements where VSOE of fair value has not been established for the PCS. As a result, for these sales, associated revenues are deferred and recognized ratably over the term of the PCS arrangement, generally four years.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

*PCS and maintenance services*

Service revenue for providing PCS, which includes warranty services, extended warranty services, unspecified when and if available product upgrades and technical support is deferred and recognized ratably over the service period, generally one year, until no further obligation exists. At the time of sale, the Company provides for the estimated incremental costs of meeting product warranty if the incremental warranty costs are expected to exceed the related service revenues. Training and consulting service revenues that are not deemed essential to the functionality of the CyberKnife system, are recognized as such services are performed.

Costs associated with providing PCS and maintenance services are expensed when incurred, except when those costs are related to units where revenue recognition has been deferred. In those cases, the costs are deferred until the recognition of the related revenue and are recognized over the period of revenue recognition.

*Distributor sales*

Sales to third party distributors are evidenced by a distribution agreement governing the relationship together with binding purchase orders on a transaction-by-transaction basis. The Company records revenues from sales of CyberKnife systems to distributors based on a sell-through method where revenue is only recognized upon sell-through of the product to the end user customer and once all other revenue recognition criteria are met including completion of all obligations under the terms of the purchase order. For sales of upgrades and accessories to distributors, revenue is recognized on either a sell-through or sell-in basis, depending upon the terms of the purchase order and once all revenue recognition criteria are met. These criteria require that persuasive evidence of an arrangement exist, the fees are fixed or determinable, collection of the resulting receivable is probable and there is no right of return.

The Company's agreements with customers and distributors generally do not contain product return rights.

*Shared ownership program*

The Company also enters into arrangements under its shared ownership program with certain customers. Agreements under the shared ownership program typically have a term of five years, during which the customer has the option to purchase the system, either at the end of the contractual period or in advance, at the customer's request, at pre-determined prices. Under the terms of such program, the Company retains title to its CyberKnife system, while the customer has use of the product. The Company generally receives a minimum monthly payment and earns additional revenues from the customer based upon its use of the product. The Company may provide unspecified upgrades to the product during the term of each program when and if available. Upfront non-refundable payments from the customer are deferred and recognized as revenue over the contractual period. Revenues from the shared ownership program are recorded as they become earned and receivable and are included within shared ownership program revenues in the consolidated statements of operations.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

Future minimum revenues under the shared ownership arrangements as of June 30, 2009 are as follows (in thousands):

| | |
|---|---|
| 2010 | 240 |
| 2011 | 240 |
| 2012 | 240 |
| 2013 | 180 |
| Total | $900 |

Total usage-based fee revenues, included in shared ownership program revenue, earned from the CyberKnife systems operated under the shared ownership program amounted to $3.2 million, $8.1 million, and $7.5 million for the years ended June 30, 2009, 2008, and 2007, respectively.

Under the terms of the shared ownership program, the customer has the option to purchase the CyberKnife system at pre-determined prices based on the period the system has been in use and considering the lease payments already received. Revenue from such sales is recorded in accordance with the Company's revenue recognition policy, taking into account the PCS and any other elements that might be sold as part of the arrangement. At June 30, 2009, the Company had two systems installed under its shared ownership program. During the years ended June 30, 2009, 2008 and 2007, $3.2 million, $23.7 million and $3.0 million, respectively, of revenue was recognized in the consolidated statements of operations for the sale of two, twelve and one CyberKnife systems, respectively, that were formerly under the shared ownership program. At June 30, 2009 and 2008, $747,000 and $2.3 million, respectively, of amounts for extended warranty and training services related to these sold shared ownership units remained recorded as deferred revenue, and will be recognized over the life of the extended warranty service period and as training service obligations are fulfilled.

The CyberKnife systems associated with the Company's shared ownership program are recorded within property and equipment. Effective April 1, 2009, the estimated useful life of the Company's placement units was reduced from ten to seven years. In accordance with Statement of Financial Accounting Standards 154, *Accounting for Changes and Error Corrections* ("SFAS 154"), the Company accounted for this change in useful life as a change in accounting estimate, and as a result, the Company recorded an additional $27,000 of depreciation expense for three applicable CyberKnife units during the fourth quarter of fiscal 2009. Depreciation and warranty expenses attributable to the CyberKnife shared ownership systems are recorded within cost of shared ownership program.

*Long-term manufacturing contracts*

The Company recognizes revenue and cost of revenue related to long-term manufacturing contracts using contract accounting on the percentage-of-completion method in accordance with SOP No. 81-1, *Accounting for Performance of Construction-Type and Certain Production-Type Contracts,* ("SOP 81-1"). During the years ended June 30, 2009, 2008, and 2007, contract revenue of $2.4 million, $1.0 million, and $0, respectively, was recorded with related costs of $2.4 million, $943,000, and $0, respectively. The Company recognizes any loss provisions from the total contract in the period such loss is identified. During the year ended June 30, 2009, increases in projected costs to complete were sufficient to create a loss position for certain projects. As such, an estimated loss provision of $97,000 was recognized during the year ended June 30, 2009. No loss provision was recognized during the years

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

ended June 30, 2008 or 2007. As of June 30, 2009 and 2008, costs of $0 and $1.0 million, respectively, were recorded in deferred cost of revenue related to long-term manufacturing contracts.

**Deferred Revenue and Deferred Cost of Revenue**

Deferred revenue consists of deferred product revenue, deferred shared ownership program revenue, deferred service revenue and deferred other revenue. Deferred product revenue arises from timing differences between the shipment of product and satisfaction of all revenue recognition criteria consistent with the Company's revenue recognition policy. Deferred shared ownership program revenue results from the receipt of advance payments that will be recognized ratably over the term of the shared ownership program. Deferred service revenue results from the advance payment for services to be delivered over a period of time, usually one year. Service revenue is recognized ratably over the service period. Deferred other revenue results primarily from the Japan upgrade services programs and is due to timing differences between the receipt of cash payments for those upgrades and final delivery to the end user customer. Deferred cost of revenue consists of the direct costs associated with the manufacturing of units, direct service costs for which the revenue has been deferred in accordance with the Company's revenue recognition policies, and deferred costs associated with the Japan upgrade services. Deferred revenue, and associated deferred cost of revenue, expected to be realized within one year are classified as current liabilities and current assets, respectively.

**Customer Advances**

Customer advances represent payments made by customers in advance of product shipment.

**Property and Equipment**

Property and equipment are recorded at cost less accumulated depreciation and amortization. Depreciation is calculated using the straight-line method over the estimated useful lives of the related assets. Leasehold improvements are depreciated on a straight-line basis over the remaining term of the lease or the estimated useful life of the asset, whichever is shorter. Machinery and equipment are depreciated over five years. Furniture and fixtures are depreciated over four years. Computer and office equipment are depreciated over three years. CyberKnife systems covered by the shared ownership program are depreciated over their estimated useful life of seven years. Repairs and maintenance costs, which are not considered improvements and do not extend the useful life of the property and equipment, are expensed as incurred. The cost and related accumulated depreciation of property and equipment sold or no longer in service are eliminated from the accounts and any gain or loss is recognized.

**Impairment of Long-Lived Assets**

In accordance with the provisions of SFAS No. 144, *Accounting for the Impairment or Disposal of Long-lived Assets,* ("SFAS 144") the Company reviews long-lived assets, including property and equipment, for impairment whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. Under SFAS 144, an impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition is less than its carrying amount. Impairment, if any, is measured as

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

the amount by which the carrying value of a long-lived asset exceeds its fair value. Through June 30, 2009, there have been no such impairment losses.

**Goodwill and Purchased Intangible Assets**

Goodwill represents the excess of acquisition cost over the fair value of tangible and identified intangible net assets of businesses acquired. In accordance with SFAS No, 142, *Goodwill and Intangible Assets* ("SFAS 142"), goodwill is not amortized, but is tested for impairment on an annual basis whenever events and changes in circumstances suggest that the carrying amount may not be recoverable, and written down when impaired.

Purchased intangible assets other than goodwill, including purchased completed technology and customer contracts, are amortized on a straight-line basis over their estimated useful lives unless their lives are determined to be indefinite. Purchased intangible assets are carried at cost, less accumulated amortization. Amortization is computed over the estimated useful lives of the respective assets which is typically seven years. In accordance with SFAS 142, purchased intangible assets other than goodwill are also tested for impairment on an annual basis and whenever events and changes in circumstances suggest that the carrying amount may not be recoverable, written down accordingly. To date, no such events have occurred and the Company has not recorded any impairment charges on its purchased intangible assets or goodwill.

**Shipping and Handling**

The Company's billings for shipping and handling for product shipments to customers are included in product revenue. Shipping and handling costs incurred for inventory purchases are included in cost of products.

**Software Development Costs**

Software development costs are included in research and development and are expensed as incurred. After technological feasibility is established, material software development costs are capitalized in accordance with SFAS No. 86, *Accounting for the Costs of Computer Software to Be Sold, Leased, or Otherwise Marketed*. The capitalized cost is then amortized on a straight-line basis over the estimated product life, or on the ratio of current revenues to total projected product revenue, whichever is greater. To date, the period between achieving technological feasibility, which the Company has defined as the establishment of a working model which typically occurs when the beta testing commences, and the general availability of such software has been short and software development costs qualifying for capitalization have been insignificant.

**Advertising Expenses**

The Company expenses the costs of advertising and promoting its products and services as incurred. Advertising expenses were approximately $1.8 million, $1.0 million, and $1.0 million for the years ended June 30, 2009, 2008, and 2007, respectively.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

**Research and Development Costs**

Costs related to research, design and development of products are charged to research and development expense as incurred. These costs include direct salaries, benefits, and other headcount related costs for research and development personnel; costs for materials used in research and development activities; costs for outside services and allocated portions of facilities and other corporate costs. The Company has entered into research and clinical study arrangements with selected hospitals, cancer treatment centers, academic institutions and research institutions worldwide. These agreements support the Company's internal research and development capabilities.

**Stock-Based Compensation**

Effective July 1, 2006, the Company adopted SFAS No. 123R, *Share-Based Payment* ("SFAS 123R") using the modified prospective method. Under this method, compensation cost is recognized beginning with the effective date of adoption of SFAS 123R for all share-based payments (a) granted or modified after the effective date of adoption and (b) granted prior to the effective date of adoption that remained unvested on the effective date. SFAS 123R also requires the benefits of tax deductions in excess of recognized compensation cost be reported as a financing cash flow, rather than as an operating cash flow as required under previous guidance.

SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary in subsequent periods if actual forfeitures differ from initial estimates. Stock-based compensation expense was recorded net of estimated forfeitures for the years ended June 30, 2009, 2008 and 2007 such that expense was recorded only for those stock-based awards that were expected to vest. For the year ended June 30, 2007, the Company recorded a cumulative effect of a change in accounting principle of $838,000, net of tax of $0, related to the adoption of SFAS 123R since it had previously adjusted stock-based compensation expense at the time forfeitures occurred in accordance with SFAS 123. The cumulative effect of this change in accounting reflects estimated forfeitures related to periods prior to July 1, 2006.

Under SFAS 123R, the Company estimated the fair value of each option award on the date of grant using the Black-Scholes option-pricing model using the assumptions noted in the table below. As the Company has been operating as a public company for a period of time that is shorter than its estimated expected option life, the Company concluded that its historical price volatility does not provide a reasonable basis for input assumptions within its Black-Scholes valuation model when determining the fair value of its stock options. As a result, the Company continues to use the "simplified" method as described in SEC Staff Accounting Bulletin No. 107 as amended by SAB 110 relating to SFAS 123R. Expected volatility was based on the historical volatility of a peer group of publicly traded companies. The expected term of options was based upon the vesting term (for example, 25% on the first anniversary of the vesting start date and 36 equal monthly installments thereafter) and on its partial life history. The risk-free rate for the expected term of the option was based on the U.S. Treasury Constant Maturity rate for each of the three years ended June 30, 2009, 2008, and 2007.

During the years ended June 30, 2009, 2008 and 2007, the estimated fair values of the stock options granted were calculated at each date of grant using the Black-Scholes option pricing model, using fair values of common stock between $4.67 per share and $28.47. Following its IPO, the fair value of the Company's common stock was determined by its closing market price as published by the

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

Nasdaq Global Market. During the years ended June 30, 2009, 2008 and 2007, the Company recognized $10.3 million, $12.2 million and $10.5 million, respectively, of stock-based compensation expense for stock options granted to employees. The weighted-average assumptions used to value options granted during the years ended June 30, 2009, 2008 and 2007 were as follows:

| | Year ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Risk-free interest rate | 2.58% | 3.65% | 4.89% |
| Dividend yield | — | — | — |
| Expected life | 6.25 | 6.25 | 6.25 |
| Expected volatility | 64.3% | 60.3% | 74.8% |

Stock-based compensation expense related to stock options granted to non-employees is recognized as the stock options are earned in accordance with SFAS 123 and Emerging Issues Task Force ("EITF") No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. The Company believes that the fair value of the stock options is more reliably measurable than the fair value of the services received. The estimated fair value of the stock options granted is calculated using the Black-Scholes option pricing model, as prescribed by SFAS 123, using fair values of common stock and weighted-average assumptions as the grant vests. The Company recognized $0, $114,000, and $171,000 during the years ended June 30, 2009, 2008, and 2007, respectively, of stock-based compensation expense for stock options granted to non-employees.

During the year ended June 30, 2009, the Company recognized $929,000 of stock-based compensation expense related to accelerated vesting of stock options and restricted stock units ("RSUs") in conjunction with employee separation costs. No such expenses were recognized during the years ended June 30, 2008 and 2007.

In January 2007, in connection with the Company's IPO, the Board of Directors approved the 2007 Incentive Award Plan ("2007 Plan") and 2007 Employee Stock Purchase Plan ("ESPP") which became effective on the date of the Company's IPO. The ESPP is deemed compensatory and compensation costs are accounted for under SFAS 123R.

Under the ESPP, qualified employees are entitled to purchase the Company's common stock at 85% of the lower of the fair market value of the common stock on the commencement date of each offering period or the fair market value on the specified purchase date. During the years ended June 30, 2009, 2008 and 2007 the estimated fair value of ESPP shares was calculated at the date of grant using the Black-Scholes option pricing model, using fair values of common stock between $4.06 per share and $18.00 per share. Expected volatility was based on the historical volatility of a peer group of publicly traded companies. The expected term of six months was based upon the offering period of the ESPP. The risk-free rate for the expected term of the ESPP option was based on the U.S. Treasury Constant Maturity rate for each offering period. For the years ended June 30, 2009, 2008 and 2007, the Company recognized $998,000, $1.0 million and $441,000 of compensation expense related to its ESPP,

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

respectively. The following weighted-average assumptions were used during the years ended June 30, 2009, 2008 and 2007:

| | Year ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Risk-free interest rate | 0.42% | 3.07% | 5.16% |
| Dividend yield | — | — | — |
| Expected life | 0.50 | 0.50 | 0.75 |
| Expected volatility | 84.2% | 59.8% | 49.9% |

In connection with the 2007 Plan, the Company issued RSUs and recognized $4.1 million, $4.0 million and $1.5 million of stock-based compensation expense, net of estimated forfeitures, for RSUs granted during the years ended June 30, 2009, 2008 and 2007, at a weighted-average grant date fair value of $6.49, $14.55 and $28.17 per share, respectively.

Tax benefits from tax deductions for exercised options and disqualifying dispositions in excess of the deferred tax asset attributable to stock compensation costs for such options are credited to additional paid-in capital. Realized excess tax benefits for the years ended June 30, 2009, 2008, and 2007 were $0, $419,000, and $0, respectively.

At June 30, 2009 and 2008, $456,000 and $489,000 of capitalized stock-based compensation costs were included as components of inventory and deferred cost of revenue.

**Net Income (Loss) Per Common Share**

Basic net income (loss) per share is computed by dividing net income (loss) by the weighted-average number of common shares outstanding during the period. Diluted net income (loss) per share is computed by dividing net income (loss) by the weighted-average number of common shares outstanding and other dilutive common shares outstanding during the period. The potential dilutive shares of our common stock resulting from the assumed exercise of outstanding stock options and equivalents are determined under treasury stock method.

For the years ended June 30, 2009, 2008 and 2007, the basic net income (loss) per share amounts were based on weighted-average common shares outstanding of 55,413,025, 54,530,650, and 30,764,447, respectively. For the years ended June 30, 2009, 2008 and 2007, the diluted net income (loss) per share amounts were based on weighted-average common stock equivalents of 58,728,755, 60,434,263, and 30,764,447, respectively. The number of anti-dilutive shares excluded from the calculation of diluted net income (loss) per share was as follows:

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Preferred stock (as if converted) | — | — | 15,318,782 |
| Options to purchase common stock | 3,504,979 | 1,993,964 | 10,791,875 |
| Restricted stock units | 552,120 | 669,449 | 648,330 |
| | 4,057,099 | 2,663,413 | 26,758,987 |

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

The following table sets forth the basic and diluted per share computations:

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Numerator: | | | |
| Net income (loss) (in thousands) | $ 609 | $ 5,383 | $ (5,616) |
| Denominator: | | | |
| Basic weighted-average shares outstanding | 55,413,025 | 54,530,650 | 30,764,447 |
| Stock options and restricted stock units | 3,315,730 | 5,903,613 | — |
| Diluted weighted-average shares of common stock outstanding | 58,728,755 | 60,434,263 | 30,764,447 |
| Basic net income (loss) per share: | $ 0.01 | $ 0.10 | $ (0.18) |
| Diluted net income (loss) per share: | $ 0.01 | $ 0.09 | $ (0.18) |

**Income Taxes**

The Company is required to estimate its income taxes in each of the tax jurisdictions in which it operates prior to the completion and filing of tax returns for such periods. This process involves estimating actual current tax expense together with assessing temporary differences in the treatment of items for tax purposes versus financial accounting purposes that may create net deferred tax assets and liabilities. The Company accounts for income taxes under the asset and liability method, which requires, among other things, that deferred income taxes be provided for temporary differences between the tax bases of the Company's assets and liabilities and their financial statement reported amounts. In addition, deferred tax assets are recorded for the future benefit of utilizing net operating losses, research and development credit carry forwards and temporary differences.

The Company records a valuation allowance to reduce its deferred tax assets to the amount the Company believes is more likely than not to be realized. Because of the uncertainty of the realization of the deferred tax assets, the Company has recorded a full valuation allowance against its domestic net deferred tax assets.

In June 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS No. 109, *Accounting for Income Taxes* ("SFAS 109"), and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The Company adopted the provisions of FIN 48 effective July 1, 2007.

As a result of the implementation of FIN 48, the Company recognized a tax reserve for uncertain tax positions of $252,000, which was accounted for as a reduction to the July 1, 2007 balance of retained earnings. Furthermore, as of June 30, 2009, the Company had $3.4 million of unrecognized tax benefits, $288,000 of which would affect its income tax expense if recognized. The total unrecognized tax benefits as of June 30, 2009, mainly relate to federal and state research tax credits. The Company files income tax returns in the US federal jurisdiction, and various states and foreign jurisdictions. Due

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

to attributes being carried forward and utilized in open years, the statute of limitations remains open for the US federal jurisdiction and domestic states for tax years from 1999 forward. The statute of limitations in France remains open from 2008, Hong Kong remains open from 2003 and Japan remains open from 2007.

In accordance with SFAS No.109, *Accounting for Income Taxes,* the Company classifies interest and penalties resulting from an underpayment of income taxes, if any, as a component of tax expense. Such interest and penalties were immaterial as of June 30, 2009.

The calculation of unrecognized tax benefits involves dealing with uncertainties in the application of complex global tax regulations. Management regularly assesses the Company's tax positions in light of legislative, bilateral tax treaty, regulatory and judicial developments in the countries in which the Company does business. Management does not believe there will be any material changes in the unrecognized tax benefits within the next 12 months.

**Comprehensive Income (Loss)**

Comprehensive income (loss) is comprised of net income (loss) and other comprehensive income (loss). Other comprehensive income (loss) consists of foreign currency translation adjustments and unrealized gains and losses on investments that have been excluded from the determination of net income (loss). The Company has reported the components of comprehensive income (loss) for the years ended June 30, 2009, 2008 and 2007 in its consolidated statements of stockholders' equity (deficit).

**Segment Information**

The Company has determined that it operates in only one segment in accordance with SFAS No. 131, *Disclosures About Segments of an Enterprise and Related Information* ("SFAS 131") as it only reports profit and loss information on an aggregate basis to its chief operating decision maker. The Company's long-lived assets maintained outside the United States are not material.

Revenue by geographic region is based on the shipping addresses of the Company's customers. The following summarizes revenue by geographic region (in thousands):

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Americas (including Puerto Rico) | $171,563 | $142,557 | $ 91,174 |
| Europe | 30,874 | 10,138 | 30,175 |
| Asia (excluding Japan) | 19,848 | 40,770 | 13,797 |
| Japan | 11,313 | 16,916 | 5,306 |
| Total | $233,598 | $210,381 | $140,452 |

**Subsequent Events**

In June 2009, the Company adopted SFAS No. 165, *Subsequent Events*, and accordingly has evaluated its subsequent events through September 8, 2009, the date this Annual Report on Form 10-K was filed with the Securities and Exchange Commission.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

**Recent Accounting Pronouncements**

In June 2009, the FASB issued SFAS No. 166, *Accounting for Transfers of Financial Assets, an amendment to SFAS No. 140.* The new standard eliminates the concept of a "qualifying special-purpose entity," changes the requirements for derecognizing financial assets, and requires additional disclosures in order to enhance information reported to users of financial statements by providing greater transparency about transfers of financial assets, including securitization transactions, and an entity's continuing involvement in and exposure to the risks related to transferred financial assets. SFAS No. 166 is effective for fiscal years beginning after November 15, 2009. We will adopt SFAS No. 166 in fiscal 2011 and are evaluating the impact it will have to our consolidated financial statements.

In May 2009, the FASB issued SFAS No. 165, *Subsequent Events*. This standard is intended to establish general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. Specifically, this standard sets forth the period after the balance sheet date during which management of a reporting entity should evaluate events or transactions that may occur for potential recognition or disclosure in the financial statements, the circumstances under which an entity should recognize events or transactions occurring after the balance sheet date in its financial statements, and the disclosures that an entity should make about events or transactions that occurred after the balance sheet date. SFAS No. 165 is effective for fiscal years and interim periods ending after June 15, 2009 and applied prospectively. The adoption of SFAS 165 did not have a material impact on the Company's consolidated financial statements.

In April 2009, the FASB issued FASB Staff Position ("FSP") FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly* ("FSP FAS 157-4"). FSP FAS 157-4 provides guidance on (1) estimating the fair value of an asset or liability when the volume and level of activity for the asset or liability have significantly decreased and (2) identifying transactions that are not orderly. This FSP is effective for the first reporting period (interim or annual) ending after June 15, 2009, with earlier application permitted. The adoption of FSP FAS 157-4 did not have a material impact on the Company's consolidated financial statements.

Also in April 2009, the FASB issued FSP FAS 115-2 and FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments* ("FSP FAS 115-2"). FSP FAS 115-2 requires entities to initially apply the provisions of the standard to previously other than temporarily impaired debt securities (debt securities that the Company does not intend to sell and that the Company is not more likely than not required to sell before recovery), existing as of the date of initial adoption, by making a cumulative-effect adjustment to the opening balance of retained earnings in the period of adoption. This FSP is effective for the first reporting period (interim or annual) ending after June 15, 2009, with earlier application permitted. The adoption of FSP FAS 115-2 did not have a material impact on the Company's consolidated financial statements.

Also in April 2009, the FASB issued FSP FAS 107-1 and APB 28-1, *Interim Disclosures About Fair Value of Financial Instruments* ("FSP FAS 107-1"). FSP FAS 107-1 expands the fair value disclosures required for all financial instruments within the scope of FASB Statement No. 107, *Disclosures About Fair Value of Financial Instruments* ("FAS 107"), to interim periods. It also requires entities to disclose the method(s) and significant assumptions used to estimate the fair value of financial instruments in financial statements on an interim and annual basis and to highlight any changes from prior periods.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

This FSP is effective for the first reporting period (interim or annual) ending after June 15, 2009, with earlier application permitted. The adoption of FSP FAS 107-1 did not have a material impact on the Company's consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141 (revised 2007), "*Business Combinations*" ("*SFAS 141R*"). SFAS 141R establishes principles and requirements for recognizing and measuring assets acquired, liabilities assumed and any noncontrolling interests in the acquiree in a business combination. SFAS 141R also provides guidance for recognizing and measuring goodwill acquired in a business combination; requires purchased in-process research and development ("*IPR&D*") to be capitalized at fair value as intangible assets at the time of acquisition; requires acquisition-related expenses and restructuring costs to be recognized separately from the business combination; expands the definition of what constitutes a business; and requires the acquirer to disclose information that users may need to evaluate and understand the financial effect of the business combination. SFAS 141R was effective on a prospective basis and will impact business combination transactions for which the acquisition date occurs after December 15, 2008. Depending on the nature and magnitude of the Company's future business combination transactions, SFAS 141R may have a material impact on the Company's consolidated financial position and/or results of operations.

The FASB also issued FSP FAS 141(R)-1,*Accounting for Assets Acquired and Liabilities Assumed in a Business Combination That Arise From Contingencies* ("FSP FAS 141(R)-1") in April 2009. Under the FSP, an acquirer is required to recognize at fair value an asset acquired or a liability assumed in a business combination that arises from a contingency if the acquisition-date fair value of that asset or liability can be determined during the measurement period. If the acquisition-date fair value cannot be determined, then the acquirer follows the recognition criteria in FASB Statement No. 5, *Accounting for Contingencies,* and FASB Interpretation No. 14, *Reasonable Estimation of the Amount of a Loss—an interpretation of FASB Statement No. 5,* to determine whether the contingency should be recognized as of the acquisition date or after it. This FSP is effective for business combinations whose acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. Depending on the nature and magnitude of our future business combination transactions, SFAS 141(R)-1 may have a material impact on the Company's consolidated financial statements..

In December 2008, the FASB issued FASB Staff Position ("FSP") FAS 140-4 and Financial Interpretations ("FIN") 46(R)-8, *Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interest in Variable Interest Entities* ("FSP FAS 140-4"). This disclosure-only FSP improves the transparency of transfers of financial assets and an enterprise's involvement with variable interest entities, including qualifying special-purpose entities. This FSP is effective for the first reporting period (interim or annual) ending after December 15, 2008, with earlier application encouraged. The adoption of FSP FAS 140-4 and FIN 46(R)-8 did not have a material impact on the Company's consolidated financial statements.

In October 2008, the FASB issued FSP No. FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active* ("FSP FAS 157-3"). FSP FAS 157-3 provides examples to illustrate key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. FSP FAS 157-3 was effective upon issuance and did not have a material impact on the Company's consolidated financial statements.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**2. Summary of Significant Accounting Policies (Continued)**

In April 2008, the FASB issued FSP FAS 142-3, *Determination of the Useful Life of Intangible Assets*, which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of intangible assets under SFAS No. 142, *Goodwill and Other Intangible Assets* ("SFAS 142"). The intent of this FSP is to improve the consistency between the useful life of a recognized intangible asset under SFAS 142 and the period of the expected cash flows used to measure the fair value of the asset under SFAS No. 141 (revised 2007), *Business Combinations* ("SFAS 141R"), and other U.S. generally accepted accounting principles. FSP FAS 142-3 is effective for financial statements issued for fiscal years and interim periods beginning after December 15, 2008. The adoption of FSP FAS 142-3 did not have a material impact on the Company's consolidated financial statements.

In March 2008, the FASB issued SFAS No. 161,*Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133* ("SFAS 161"). SFAS 161 requires enhanced disclosures regarding derivatives and hedging activities, including: (a) the manner in which an entity uses derivative instruments; (b) the manner in which derivative instruments and related hedged items are accounted for under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities*; and (c) the effect of derivative instruments and related hedged items on an entity's financial position, financial performance, and cash flows. SFAS 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. The adoption of SFAS 161 did not have a material impact on the Company's consolidated financial statements.

In December 2007, the FASB issued SFAS No. 160,*Noncontrolling Interests in Consolidated Financial Statements—An Amendment of ARB No. 51* ("SFAS 160"). SFAS 160 amends Accounting Research Bulletin No. 51,*Consolidated Financial Statements* ("ARB 51"), to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement also amends certain of ARB 51's consolidation procedures for consistency with the requirements of SFAS 141R. In addition, SFAS 160 also includes expanded disclosure requirements regarding the interests of the parent and its noncontrolling interest. The provisions of SFAS 160 are effective for fiscal years beginning after December 15, 2008. Earlier adoption is prohibited. The adoption of SFAS 160 is not expected to have a material impact on the Company's consolidated financial statements.

**3. Financial Instruments**

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115*("SFAS 159"). SFAS 159 permits entities to choose to measure many financial instruments and certain other items at fair value, with changes in fair value recognized in earnings each reporting period. The election, called the fair value option, will enable entities to achieve an offset accounting effect for changes in fair value of certain related assets and liabilities without having to apply complex hedge accounting provisions. In November 2008, the Company entered into an agreement ("Rights Agreement") with UBS, which provides the Company with ARS Rights ("Rights") to sell its ARS at par value to UBS at any time during the period June 30, 2010 through July 2, 2012. These Rights are a separate freestanding instrument accounted for separately from the ARS, and are registered, nontransferable securities accounted for as a put option initially recorded at fair value. Under the Rights Agreement, UBS may, at its discretion, purchase or sell the ARS at any time through July 2, 2012 without prior notice to the Company and must pay the Company par value for the ARS within one day of the sale transaction

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**3. Financial Instruments (Continued)**

settlement. The Company agreed to release UBS from certain potential claims related to its marketing and sale of ARS. Additionally, UBS offered a "no net cost" loan to the Company up to 75% of par value of the ARS as determined by UBS until June 30, 2010 (See Note 12).

The Company elected fair value accounting for the put option recorded in connection with the Rights Agreement. This election was made in order to mitigate volatility in earnings caused by accounting for the purchased put option and underlying ARS under different methods. The initial election of fair value resulted in a gain included in "Other income, net" for the put option which is recorded in long-term trading securities on the accompanying consolidated balance sheet as of June 30, 2009.

Due to UBS's ability to sell the ARS at any time under the Rights Agreement, the ARS previously reported as available-for-sale have been transferred to trading securities and are classified as long-term trading securities on the consolidated balance sheet as of June 30, 2009. Due to the change in classification to trading securities, at the time of entering into the Rights Agreement, the Company transferred the previously accumulated unrealized loss of $3.8 million from "Accumulated other comprehensive income (loss)" to "Other income, net" and recorded additional unrealized gains of $2.1 million relating to the change in fair value of the trading securities from November 2008 through June 30, 2009 in "Other income, net". At June 30, 2009, the total fair value of the ARS was $20.7 million, net of $1.7 million of unrealized losses.

Additionally, the Company recorded unrealized gains of $3.3 million related to the fair value of the put option at the time it entered into the Rights Agreement and recorded unrealized losses relating to the change in fair value of the put option from November 2008 through June 30, 2009 of $2.0 million, for a total fair value of the put option of $1.3 million as of June 30, 2009. During the year ended June 30, 2009, the $1.7 million unrealized loss in fair value of the ARS and the $2.0 million of unrealized loss on the put option, partially offset by the $3.3 million gain recognized on the put option, resulted in a net $319,000 decrease to "Other income, net".

Effective July 1, 2008, the Company adopted the provisions of SFAS No. 157, *Fair Value Measurements* ("SFAS 157"), subject to the deferral provisions of FSP FAS No. 157-2, *Effective Date of FASB Statement No. 157* ("FSP 157-2"), on a prospective basis for our financial assets and liabilities.

This standard defines fair value, establishes a framework for measuring fair value and expands disclosure requirements about fair value measurements. SFAS 157 defines fair value as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The fair value hierarchy prescribed by SFAS 157 contains three levels of inputs that may be used to measure fair value, as follows:

*Level 1*—Unadjusted quoted prices that are available in active markets for the identical assets or liabilities at the measurement date.

*Level 2*—Other observable inputs available at the measurement date, other than quoted prices included in Level 1, either directly or indirectly, including:

- Quoted prices for similar assets or liabilities in active markets;
- Quoted prices for identical or similar assets in non-active markets;

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**3. Financial Instruments (Continued)**

- Inputs other than quoted prices that are observable for the asset or liability; and
- Inputs that are derived principally from or corroborated by other observable market data.

*Level 3*—Unobservable inputs that cannot be corroborated by observable market data and reflect the use of significant management judgment. These values are generally determined using pricing models for which the assumptions utilize management's estimates of market participant assumptions.

The following tables sets forth by level within the fair value hierarchy the Company's financial assets that were accounted for at fair value on a recurring basis at June 30, 2009, according to the valuation techniques the Company used to determine their fair values (in thousands):

| | Fair Value at June 30, 2009 | Fair Value Measurements Using Inputs Considered as | | |
|---|---|---|---|---|
| | | Level 1 | Level 2 | Level 3 |
| | | (in thousands) | | |
| Money market funds | $ 19,549 | $19,549 | $ — | $ — |
| Corporate notes | 27,251 | — | 27,251 | — |
| Commercial paper | 21,865 | — | 21,865 | — |
| U.S. government and governmental agency obligations | 50,763 | — | 50,763 | — |
| Auction-rate securities | 20,669 | — | — | 20,669 |
| Put option | 1,338 | — | — | 1,338 |
| Total | $141,435 | $19,549 | $99,879 | $22,007 |

Investments in marketable securities classified as available-for-sale by security type at June 30, 2009 and 2008, consisted of the following (in thousands):

| | June 30, 2009 | | | |
|---|---|---|---|---|
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| Short-term investments: | | | | |
| Commercial paper | $ 21,869 | $ 14 | $ (18) | $ 21,865 |
| US Corporate debt | 9,993 | 81 | — | 10,074 |
| Government-sponsored enterprises | 32,456 | 239 | — | 32,695 |
| Total short-term investments | $ 64,318 | $ 334 | $ (18) | $ 64,634 |
| Long-term investments: | | | | |
| US Corporate debt | $ 17,094 | $ 103 | $ (20) | $ 17,177 |
| Government-sponsored enterprises | 18,001 | 67 | — | 18,068 |
| Total long-term investments | $ 35,095 | $ 170 | $ (20) | $ 35,245 |
| Total short and long-term investments | $ 99,413 | $ 504 | $ (38) | $ 99,879 |

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**3. Financial Instruments (Continued)**

| | June 30, 2008 | | | |
|---|---|---|---|---|
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| Short-term investments: | | | | |
| Commercial paper | $ 41,541 | $ 11 | $ (17) | $ 41,535 |
| US Corporate debt | 11,371 | 9 | (41) | 11,339 |
| Government-sponsored enterprises | 32,665 | 22 | (25) | 32,662 |
| Total short-term investments | $ 85,577 | $ 42 | $ (83) | $ 85,536 |
| Long-term investments: | | | | |
| US Corporate debt | $ 3,503 | $ — | $ (28) | $ 3,475 |
| Government-sponsored enterprises | 12,098 | — | (68) | 12,030 |
| Auction rate securities | 22,400 | — | (891) | 21,509 |
| Total long-term investments | $ 38,001 | $ — | $ (987) | $ 37,014 |
| Total short and long-term investments | $ 123,578 | $ 42 | $ (1,070) | $ 122,550 |

All of the Company's investments with continuous unrealized losses have been in an unrealized loss position for less than twelve months at June 30, 2009.

The table below presents a reconciliation of all assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3). The Company classifies financial instruments in Level 3 of the fair value hierarchy when there is reliance on at least one significant unobservable input to the valuation model. In addition to these unobservable inputs, the valuation models for Level 3 financial instruments typically also rely on a number of inputs that are readily observable either directly or indirectly. Thus, the gains and losses presented below include changes in the fair value related to both observable and unobservable inputs.

| | Year ended June 30, 2009 (in thousands) |
|---|---|
| Beginning balance | $ 21,509 |
| Change in temporary valuation adjustment previously recorded in Accumulated Other Comprehensive Income | 891 |
| Unrealized loss on auction rate securities included in earnings(1) | (1,731) |
| Acquisition of purchased put option | 3,316 |
| Unrealized loss on put option included in earnings(1) | (1,978) |
| Balance at June 30, 2009 | $ 22,007 |

(1) Represents the amount of total losses for the period included in earnings relating to assets still held on June 30, 2009.

The following methods and assumptions were used to estimate the fair value of each class of financial instrument:

*Money market funds.* Money market funds are classified as cash and cash equivalents on the Company's consolidated balance sheets.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**3. Financial Instruments (Continued)**

*Corporate notes.* Corporate notes are floating-rate obligations that are payable on demand. These are classified as available-for-sale within short-term marketable securities on the Company's consolidated balance sheets. The market approach was used to value the Company's variable-rate demand notes. The Company classified these securities as Level 2 instruments due to either its usage of observable market prices in less active markets or, when observable market prices were not available, its use of non-binding market prices that are corroborated by observable market data or quoted market prices for similar instruments.

*Commercial paper.* Commercial paper is an unsecured, short-term debt instrument issued by corporations and financial institutions that generally mature within 270 days. The entire $21.9 million held as of June 30, 2009 and $41.5 million held as of June 30, 2008 in commercial paper is classified as short-term marketable securities on the Company's consolidated balance sheets. The portion in cash and cash equivalents represents highly liquid debt instruments with insignificant interest rate risk and original maturities of ninety days or less. The market approach was used to value the Company's commercial paper. The Company classified these securities as Level 2 instruments due to either its usage of observable market prices in less active markets or, when observable market prices were not available, its use of non-binding market prices that are corroborated by observable market data or quoted market prices for similar instruments.

*U.S. government and governmental agency obligations.* U.S. government and governmental agency obligations are issued by state and local governments and other governmental entities such as authorities or special districts that generally mature within 2 years. These are classified as short-term and long-term marketable securities on the Company's consolidated balance sheets. The market approach was used to value the Company's U.S. government and governmental agency obligations. The Company classified these securities as Level 2 instruments due to either its usage of observable market prices in less active markets or, when observable market prices were not available, its use of non-binding market prices that are corroborated by observable market data or quoted market prices for similar instruments.

*Auction-rate securities.* As of June 30, 2009, there was insufficient observable market information available to determine the fair value of the Company's ARS. Prior to December 31, 2008, the Company estimated Level 3 fair values for these securities based on the financial institutions broker's valuations. The financial institution broker valued student loan ARS as floating rate notes with three pricing inputs: the coupon, the current discount margin or spread, and the maturity. The coupon was generally assumed to equal the maximum rate allowed under the terms of the instrument, the current discount margin was based on an assessment of observable yields on instruments bearing comparable risks, and the maturity was based on an assessment of the terms of the underlying instrument and the potential for restructuring the ARS. The primary unobservable input to the valuation was the maturity assumption which was set at five years for the majority of ARS instruments. Through January 6, 2008, the ARS were valued at par value due to the frequent resets that historically occurred through the auction process.

As of December 31, 2008, the Company engaged a third party valuation service to model Level 3 fair value using an income approach. The Company reviewed the methodologies employed by the third party models. This included a review of all relevant data inputs and the appropriateness of key model assumptions.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**3. Financial Instruments (Continued)**

The pricing assumptions for the ARS included the coupon rate, the estimated time to liquidity, current market rates for publicly traded corporate debt of similar credit rating and an adjustment for lack of liquidity. The coupon rate was assumed to equal the stated maximum auction rate being received, which is the lesser of (i) an average trailing twelve month yield for the ARS that is equal to the average trailing twelve month 91-day U.S. Treasury rate plus 1.20% or 1.50% premium according to provisions outlined in each security's agreement, (ii) the one-month LIBOR rate as of the auction date plus 1.5%, or (iii) a maximum interest rate of either 17% or 18% (specific to each ARS). The estimated time to liquidity was 3.25 years based on (i) expectations from industry brokers for liquidity in the market and (ii) the period over which UBS and other broker-dealers that had issued ARS have agreed to redeem certain ARS at par value.

The put option gives the Company the right to sell the ARS to UBS for a price equal to par value during the period June 30, 2010 to July 2, 2012, providing liquidity for the ARS sooner than the estimated five years. As the Company plans to exercise the put option on or around June 30, 2010, the value of the put option lies in (i) the ability to sell the securities thereby creating liquidity approximately two years before the ARS market is expected to become liquid and (ii) the avoidance of receiving below-market coupon rate while the security is illiquid and auctions are failing. The fair value of the put option represents the difference between the ARS with an estimated time to liquidity of five years and the ARS with an estimated time to liquidity of one year as the put option allows for the acceleration of liquidity and the avoidance of a below market coupon rate over the one year time period.

**4. Balance Sheet Components**

**Accounts Receivable, net**

Accounts receivable, net consisted of the following (in thousands):

| | June 30, | |
|---|---|---|
| | 2009 | 2008 |
| Accounts receivable | $36,539 | $33,264 |
| Unbilled fees and services | 372 | 681 |
| | 36,911 | 33,945 |
| Less: Allowance for doubtful accounts | (484) | (27) |
| Accounts receivable, net | $36,427 | $33,918 |

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**4. Balance Sheet Components (Continued)**

**Inventories**

Inventories consisted of the following (in thousands):

| | June 30, | |
|---|---|---|
| | 2009 | 2008 |
| Raw materials | $12,172 | $ 8,853 |
| Work-in-process | 13,006 | 3,967 |
| Finished goods | 3,731 | 10,227 |
| Total inventories | $28,909 | $23,047 |

**Property and Equipment, net**

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

| | June 30, | |
|---|---|---|
| | 2009 | 2008 |
| Furniture and fixtures | $ 3,404 | $ 3,379 |
| Computer and office equipment | 7,982 | 6,912 |
| Leasehold improvements | 7,676 | 7,579 |
| Machinery and equipment | 14,097 | 12,287 |
| CyberKnife shared ownership systems | 3,725 | 3,951 |
| | 36,884 | 34,108 |
| Less: Accumulated depreciation and amortization | (21,818) | (16,968) |
| Property and equipment, net | $ 15,066 | $ 17,140 |

Depreciation and amortization expense related to property and equipment for the years ended June 30, 2009, 2008, and 2007 was $6.4 million, $7.4 million, and $6.0 million, respectively. Accumulated depreciation related to the CyberKnife systems attributable to the shared ownership program at June 30, 2009 and 2008 was $1.0 million and $1.6 million, respectively.

**5. Investment**

On July 29, 2008, the Company and Morphormics entered into a Stock Purchase Agreement pursuant to which the Company agreed to purchase 120,000 shares of Morphormics Series C Preferred Stock at $12.50 per share, for a total purchase price of $1.5 million. In exchange, Morphormics granted the Company a non-exclusive worldwide license to integrate several of its software products into the Company's treatment planning software. The equity investment afforded the Company a voting interest of approximately 18% in Morphormics. The Company's equity is considered to be at risk and is deemed not sufficient to finance Morphormics' current product development activities without additional subordinated financial support. In addition, the Company is deemed to be Morphormics' primary beneficiary; therefore, it would absorb a majority of expected losses. Pursuant to guidance in FASB Interpretation 46(R), *Consolidation of Variable Interest Entities* ("FIN 46(R)"), the Company is required to consolidate Morphormics in its financial results. The consolidation of Morphormics' assets and liabilities did not have a material effect on the Company's consolidated balance sheet at June 30,

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**5. Investment (Continued)**

2009. Subsequent to July 29, 2008, the Company has recorded losses of $934,000 on its investment in Morphormics. The remaining $566,000 of the Company's investment remains at risk as of June 30, 2009.

**6. Goodwill and Other Purchased Intangibles**

In accordance with SFAS No. 142, *Goodwill and Other Intangible Assets* ("SFAS 142"), goodwill and other intangible assets with indefinite lives are not amortized. Intangible assets with determinable useful lives are amortized on a straight line basis over their useful lives. Goodwill and other intangible assets resulted from the Company's January 2005 acquisition of the High Energy Systems Division ("HES") of American Science and Engineering, Inc. ("AS&E"). The Company integrated this operation into its existing manufacturing operation. HES had been the sole source manufacturer of the linear accelerator used in the CyberKnife system. SFAS 142 requires that the Company perform an annual test for impairment of intangible assets with indefinite lives, and interim tests if indications of potential impairment exist. The Company performed the annual test for impairment in December 2008 concluding that there was no impairment of goodwill. At June 30, 2009, there had been no indicators to perform an interim test. The amortization expense relating to intangible assets for the years ended June 30, 2009, 2008, and 2007 was $258,000, $258,000, and $262,000, respectively. The following represents the gross carrying amounts and accumulated amortization of amortized intangible assets at June 30, 2009 and 2008, respectively (in thousands):

| | June 30, | |
|---|---|---|
| | 2009 | 2008 |
| Complete technology | $ 1,740 | $1,740 |
| Customer contract / relationship | 70 | 70 |
| | 1,810 | 1,810 |
| Less: Accumulated amortization | (1,142) | (884) |
| Intangible assets, net | $ 668 | $ 926 |

The following table represents the estimated useful life of the intangible assets subject to amortization:

| | Years |
|---|---|
| Amortized intangible assets: | |
| Complete technology | 7.0 |
| Customer contract / relationship | 7.0 |

The estimated future amortization expense of purchased intangible assets as of June 30, 2009, is as follows (in thousands):

| **Year ending June 30,** | |
|---|---|
| 2010 | 258 |
| 2011 | 258 |
| 2012 | 152 |
| Total | $668 |

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

## 7. Commitments and Contingencies

### Operating Lease Agreements

The Company leases office space under non-cancelable operating leases with various expiration dates through December 2011. Rent expense, including common area maintenance, was $6.0 million, $4.9 million, and $2.4 million for the years ended June 30, 2009, 2008, and 2007, respectively. Sublease income was $212,000, $161,000, and $165,000 for the years ended June 30, 2009, 2008, and 2007, respectively. The terms of the facility leases provide for rental payments on a graduated scale. The Company recognizes rent expense on a straight-line basis over the lease period, and has accrued for rent expense incurred but not paid.

Future minimum lease payments under non-cancelable operating lease agreements as of June 30, 2009 were as follows (in thousands):

| | Operating leases | Sublease income | Total |
|---|---|---|---|
| **Year ending June 30,** | | | |
| 2010 | 4,012 | (167) | 3,845 |
| 2011 | 1,547 | — | 1,547 |
| 2012 | 946 | — | 946 |
| 2013 | 471 | — | 471 |
| 2014 and thereafter | 531 | — | 531 |
| Total | $ 7,507 | $ (167) | $ 7,340 |

The Company enters into standard indemnification agreements with its landlords and all superior mortgagees and their respective directors, officers' agents, and employees in the ordinary course of business. Pursuant to these agreements, the Company will indemnify, hold harmless, and agree to reimburse the indemnified party for losses suffered or incurred by the indemnified party, generally the landlords, in connection with any loss, accident, injury, or damage by any third party with respect to the leased facilities. The term of these indemnification agreements is from the commencement of the lease agreements until termination of the lease agreements. The maximum potential amount of future payments the Company could be required to make under these indemnification agreements is unlimited; however, historically the Company has not incurred claims or costs to defend lawsuits or settle claims related to these indemnification agreements.

### Royalty Agreements

The Company entered into a license and royalty agreement with Schonberg Research Corporation ("Schonberg") in January 1991 in exchange for an exclusive license to use certain technology. Under the terms of the agreement, as amended in April 1996, the Company was obligated to pay Schonberg $25,000 for each CyberKnife system sold that includes the licensed technology. Maximum total aggregate payments under this license agreement were $2,500,000. Royalty expense recognized in cost of revenue or deferred cost of revenue sold under this agreement was $169,000 during the year ended June 30, 2007. No such expenses were recognized during the years ended June 30, 2009 and 2008. This agreement expired in November 2006.

In July 1997, the Company entered into a license and royalty agreement with Stanford University ("Stanford"), a related party, under which the Company has a non-exclusive license to use certain

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**7. Commitments and Contingencies (Continued)**

technology. Under this agreement, the Company is obligated to pay Stanford up to $10,000 for each CyberKnife system sold that includes the licensed technology, with the stipulation that the Company must make minimum annual payments of $25,000. Royalty expense recorded in cost of revenue or deferred cost of revenue was $195,000, $155,000, and $195,000 for the years ended June 30, 2009, 2008, and 2007, respectively. At June 30, 2009 and 2008, the Company had accrued amounts of approximately $55,000 and $40,000, respectively, included in other accrued liabilities in the consolidated balance sheets relating to this license and royalty agreement.

In January 1999, the Company entered into a license and royalty agreement with Professor Dr. Achim Schweikard ("Schweikard") of the University of Munich. Under this agreement, the Company has a non-exclusive license to use certain technology. The Company is obligated to pay Schweikard up to $5,000 for each CyberKnife system sold that includes the licensed technology, with the stipulation that the Company must make minimum annual payments of $5,000. Royalty expense under this agreement recorded in cost of revenue or deferred cost of revenue was $200,000, $160,000, and $165,000 for the years ended June 30, 2009, 2008, and 2007, respectively. At June 30, 2009 and 2008, the Company had accrued amounts of approximately $55,000 and $40,000, respectively, included in other accrued liabilities in the consolidated balance sheets relating to this license and royalty agreement.

In March 2007, the Company entered into a license and royalty agreement with Deutsches Krebsforschungszentrum ("DKFZ"), a German cancer research center. Under this agreement, the Company has a non-exclusive license to use certain technology. The Company is obligated to pay DKFZ $12,500 for each CyberKnife system sold that includes the licensed technology, with the stipulation that the Company must make minimum annual payments of $50,000. Royalty expense under this agreement recorded in cost of revenue or deferred cost of revenue was $462,500, $54,000, and $0 for the years ended June 30, 2009, 2008, and 2007, respectively. At June 30, 2009 and 2008, the Company had accrued amounts of approximately $288,000 and $38,000, respectively, included in other accrued liabilities in the consolidated balance sheets relating to this license and royalty agreement.

**Contingencies**

From time to time, the Company may become involved in litigation relating to claims arising from the ordinary course of business. Management does not believe the final disposition of these matters will have a material adverse effect on the financial position, results of operations or future cash flows of the Company.

**Software License Indemnity**

Under the terms of the Company's software license agreements with its customers, the Company agrees that in the event the software sold infringes upon any patent, copyright, trademark, or any other proprietary right of a third party, it will indemnify its customer licensees, against any loss, expense, or liability from any damages that may be awarded against its customer. The Company includes this infringement indemnification in all of its software license agreements and selected managed services arrangements. In the event the customer cannot use the software or service due to infringement and the Company cannot obtain the right to use, replace or modify the license or service in a commercially feasible manner so that it no longer infringes, then the Company may terminate the license and provide the customer a refund of the fees paid by the customer for the infringing license or service. The

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**7. Commitments and Contingencies (Continued)**

Company has recorded no liability associated with this indemnification, as it is not aware of any pending or threatened actions that are probable losses as of June 30, 2009.

**8. Stockholders' Equity**

**Common Stock**

In February 2007, the Company completed its IPO of common stock in which a total of 18,399,998 shares were sold and issued, including 8,000,000 shares sold by selling stockholders at an issue price of $18.00 per share. The Company raised a total of $187.2 million in gross proceeds from the IPO, or approximately $170.6 million in net proceeds after deducting underwriting discounts and commissions of $13.1 million and estimated other offering costs of approximately $3.5 million. Upon the closing of the IPO, all shares of convertible preferred stock outstanding and warrants outstanding automatically converted into 25,186,285 and 495,833 shares of common stock, respectively.

As of June 30, 2007, the Company's Amended and Restated Certificate of Incorporation authorized the Company to issue 100,000,000 shares of common stock. As of June 30, 2009 and 2008, there were 58,783,547 and 56,719,864 shares of common stock issued and 56,643,529 and 54,579,846 shares of common stock outstanding, respectively.

In August 2007 the Company announced that the Board of Directors had approved a stock repurchase plan that authorized the Company to repurchase shares of its common stock. Under the plan, the Company has the ability to acquire up to $25.0 million of common shares in the open market over a period of one year. No shares were repurchased during the year ended June 30, 2009. As of June 30, 2008, the Company had repurchased 2,140,018 shares of its common stock for $24.0 million. Such shares were not retired nor returned to the status of authorized, unissued shares. Accordingly, such shares remain issued and classified as treasury stock as of June 30, 2009. The Company accounts for its treasury stock under the par value method. At June 30, 2009, the par value of the Company's treasury stock was immaterial. The stock repurchase plan expired in August 2008 and was not renewed by the Board of Directors.

**Stock Option Plans**

In 1993, the Company's stockholders approved the 1993 Stock Option Plan (the "1993 Plan"). Under the 1993 Plan, the Board of Directors is authorized to grant options to purchase up to 1,744,268 shares of common stock at fair value, as determined by the Board of Directors, to employees, directors and consultants.

In 1998, the Company's stockholders approved the 1998 Equity Incentive Plan (the "1998 Plan"). Under the 1998 Plan, the Board of Directors is authorized to grant options to purchase up to 14,100,000 shares of common stock to employees, directors and consultants.

In 2007, in connection with the Company's IPO, the Board of Directors approved the 2007 Incentive Award Plan (the "2007 Plan"). Under the 2007 Plan, the Board of Directors is authorized to award stock-based grants to employees, directors, and consultants for up to 6,000,000 shares, of which 2,645,757 were available for future issuances. As of June 30, 2009, the 1993 Plan and the 1998 Plan continued to remain in effect along with the 2007 Plan; however, options can no longer be granted from the 1993 and 1998 Plans, and all options which expire or are forfeited will be retired from the pool.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**8. Stockholders' Equity (Continued)**

Only employees are eligible to receive incentive stock options. Non-employees may be granted non-qualified options. The Board of Directors has the authority to set the exercise price of all options granted, subject to the exercise price of incentive stock options being no less than 100% of the fair value of a share of common stock on the date of grant; and no less than 85% of the fair value for non-qualified stock options.

Generally, the Company's outstanding options vest at a rate of 25% per year. Continued vesting typically terminates when the employment or consulting relationship ends.

The maximum term of the options granted to persons who own at least 10% of the voting rights of all outstanding stock on the date of grant is 5 years. The maximum term of all other options is 10 years.

The options outstanding and exercisable, by exercise price, at June 30, 2009 were as follows:

| | Options Outstanding | | | Options Exercisable | |
|---|---|---|---|---|---|
| Exercise Price | Number of Options | Weighted Average Remaining Contractual Life (Years) | Weighted Average Exercise Price | Number of Options | Weighted Average Exercise Price |
| $0.75 | 2,218,455 | 2.71 | $ 0.75 | 2,218,455 | $ 0.75 |
| $0.85 - $2.50 | 852,900 | 4.87 | $ 2.03 | 852,900 | $ 2.03 |
| $3.00 | 23,000 | 1.39 | $ 3.00 | 23,000 | $ 3.00 |
| $3.50 | 1,075,391 | 5.46 | $ 3.50 | 1,075,391 | $ 3.50 |
| $3.75 - $4.67 | 897,570 | 7.66 | $ 4.49 | 534,262 | $ 4.38 |
| $5.03 - $8.25 | 1,257,542 | 8.96 | $ 7.01 | 329,271 | $ 7.02 |
| $8.54 - $10.00 | 1,127,225 | 6.93 | $ 9.57 | 775,668 | $ 9.60 |
| $10.36 - $23.11 | 828,666 | 8.07 | $ 14.87 | 383,126 | $ 15.02 |
| $28.47 | 174,567 | 7.74 | $ 28.47 | 130,675 | $ 28.47 |
| | 8,455,316 | 5.92 | $ 5.70 | 6,322,748 | $ 4.55 |

The aggregate intrinsic value in the table below represents the total pretax intrinsic value (the difference between the fair value of the Company's common stock on June 30, 2009 of $6.88 and the exercise price of the options) that would have been received by option holders if all options exercisable had been exercised on June 30, 2009. The total intrinsic value of options exercised in the years ended June 30, 2009, 2008, and 2007 was approximately $4.4 million, $29.2 million, and $26.3 million, respectively. Cash received from option exercises for the years ended June 30, 2009, 2008 and 2007 was $4.1 million, $4.4 million and $1.7 million, respectively.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**8. Stockholders' Equity (Continued)**

Option activity during the year ended June 30, 2009 was as follows:

| | Options outstanding | Weighted average exercise price | Weighted average remaining contractual life (years) | Aggregate intrinsic value as of June 30, 2009 |
|---|---|---|---|---|
| Balance at June 30, 2008 | 9,212,831 | $ 5.70 | | |
| Options granted | 1,584,404 | $ 6.55 | | |
| Options forfeited | (891,799) | $ 11.94 | | |
| Options exercised | (1,450,120) | $ 2.83 | | |
| Balance at June 30, 2009 | 8,455,316 | $ 5.70 | 5.92 | $ 24,113,897 |
| Vested or Expected to vest at June 30, 2009 | 8,181,377 | $ 5.60 | 5.82 | $ 23,940,736 |
| Exercisable at June 30, 2009 | 6,322,748 | $ 4.55 | 4.95 | $ 22,898,619 |

As of June 30, 2009, there was approximately $17.8 million, net of estimated forfeitures, of unrecognized compensation cost related to unvested stock options which is expected to be recognized over a weighted-average period of 2.05 years. The Company's current practice is to issue new shares to satisfy share option exercises. The total fair value of shares vested during the years ended June 30, 2009, 2008, and 2007 was $10.8 million, $14.3 million, and $9.5 million, respectively.

The weighted average fair value of options granted was $4.01, $8.14, and $11.40 per share for the years ended June 30, 2009, 2008, and 2007, respectively.

**Restricted Stock Units**

Restricted stock units granted generally vest at a rate of 25% per year. However, certain RSU's granted vest 10% upon the first anniversary year of the grant date, 20% upon the second anniversary year of the grant date, 30% upon the third anniversary year of the grant date and 40% upon the fourth anniversary year of the grant date. Compensation charges for such graded RSU's are recognized using the straight-line method. Continued vesting typically terminates when the employment relationship ends.

As of June 30, 2009, there was approximately $12.7 million of unrecognized compensation cost related to RSU's, which is expected to be recognized over a weighted-average period of 1.90 years.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**8. Stockholders' Equity (Continued)**

Combined activity under the 1993 Plan, 1998 Plan and 2007 Plan (the "Plans") was as follows:

| | Shares Available For Grant | Number of Options | Weighted Average Exercise Price | Number of RSUs | Weighted Average Grant Date Fair Value |
|---|---|---|---|---|---|
| Balance at June 30, 2006 | 2,156,232 | 10,900,285 | $ 2.07 | — | $ — |
| Additional shares reserved | 4,500,000 | — | $ — | — | $ — |
| Plan shares expired | (987,662) | — | $ — | — | $ — |
| Grants | (2,440,289) | 1,775,774 | $ 12.50 | 664,515 | $28.17 |
| Forfeitures | 360,500 | (344,315) | $ 5.93 | (16,185) | $28.47 |
| Exercises or releases | — | (1,539,869) | $ 1.14 | — | $ — |
| Balance at June 30, 2007 | 3,588,781 | 10,791,875 | $ 3.79 | 648,330 | $28.16 |
| Plan shares expired | (209,829) | — | $ — | — | $ — |
| Grants | (1,481,830) | 1,220,930 | $ 14.17 | 260,900 | $14.55 |
| Forfeitures | 329,059 | (235,466) | $ 5.71 | (93,593) | $27.58 |
| Exercises or releases | — | (2,564,508) | $ 1.70 | (91,603) | $10.90 |
| Balance at June 30, 2008 | 2,226,181 | 9,212,831 | $ 5.70 | 724,034 | $23.43 |
| Additional shares reserved | 1,500,000 | — | $ — | — | $ — |
| Plan shares expired | (415,686) | — | $ — | — | $ — |
| Grants | (1,759,969) | 1,584,404 | $ 6.55 | 175,565 | $ 6.49 |
| Forfeitures | 1,095,231 | (891,799) | $ 11.94 | (203,432) | $22.36 |
| Exercises or releases | — | (1,450,120) | $ 2.83 | (176,558) | $ 5.98 |
| Balance at June 30, 2009 | 2,645,757 | 8,455,316 | $ 5.70 | 519,609 | $18.15 |

**Employee Stock Purchase Plan**

Under the ESPP, the Company is authorized to issue up to 1,000,000 shares of common stock. Qualified employees may purchase shares of common stock through payroll deductions at a price per share that is 85% of the lesser of the fair market value of the Company's common stock as of the beginning of an applicable offering period or the applicable purchase date, with purchases generally occurring every six months. Employees' payroll deductions may not exceed 10% of their salaries. Employees may purchase up to 2,500 shares per period provided that the value of the shares purchased in any calendar year may not exceed $25,000, as calculated pursuant to the purchase plan.

The ESPP was initiated in February 2007. As of June 30, 2009, there was approximately $400,000 of unrecognized compensation cost related to the ESPP, which is expected to be recognized over a weighted-average period of 0.4 years. The weighted-average fair value of ESPP shares was $1.88 and $5.68 per share for the years ended June 30, 2009 and 2008, respectively.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

## 9. Income Taxes

For financial reporting purposes, "Income (loss) before provision for income taxes" included the following components (in thousands):

| | June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Domestic | $615 | $5,910 | $(4,919) |
| Foreign | 49 | 340 | 747 |
| Total worldwide | $664 | $6,250 | $(4,172) |

The provision (benefit) for income taxes consisted of the following (in thousands):

| | June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Current: | | | |
| Federal | $(164) | $367 | $ 558 |
| State | 41 | 180 | 508 |
| Foreign | 345 | 244 | 378 |
| Total current | 222 | 791 | 1,444 |
| Deferred: | | | |
| Federal | — | — | — |
| State | — | — | — |
| Foreign | (167) | 76 | — |
| Total deferred | (167) | 76 | — |
| Total provision | $ 55 | $867 | $1,444 |

A reconciliation of income taxes at the statutory federal income tax rate to net income taxes included in the accompanying consolidated statements of operations is as follows (in thousands):

| | June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| U.S. federal taxes (benefit): | | | |
| At federal statutory rate | $ 217 | $ 2,168 | $(1,672) |
| State tax, net of federal benefit | 41 | 180 | (218) |
| Stock-based compensation expense | 682 | 1,209 | 2,311 |
| Change in valuation allowance | 45 | (2,251) | 1,912 |
| Credits | (1,207) | (1,592) | (1,402) |
| Federal alternative minimum tax | (164) | 367 | 558 |
| Meals and entertainment | 224 | 245 | 261 |
| Other | 39 | 222 | (684) |
| Foreign | 178 | 319 | 378 |
| Total | $ 55 | $ 867 | $ 1,444 |

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**9. Income Taxes (Continued)**

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets at June 30, 2009 and 2008 were as follows (in thousands):

| | June 30, | |
|---|---|---|
| | 2009 | 2008 |
| Deferred tax assets: | | |
| Federal and state net operating losses | $ 10,336 | $ 38 |
| Accrued vacation | 1,043 | 853 |
| Deferred revenue | 5,134 | 22,769 |
| Credits | 6,868 | 6,062 |
| Capitalized research and development | 82 | 340 |
| Stock-based compensation expense | 8,596 | 8,030 |
| Reserves not deductible for tax purposes | 4,337 | 3,104 |
| Fixed assets | 634 | — |
| Other | 1,160 | 1,711 |
| Total deferred tax assets | 38,190 | 42,907 |
| Deferred tax liabilities: | | |
| Fixed assets | — | (525) |
| Unrealized gain on investment | (176) | |
| Total deferred tax liabilities | (176) | (525) |
| Valuation allowance | (37,941) | (42,382) |
| Net deferred tax assets: | $ 73 | $ — |

The Company has not provided for U.S. income taxes on undistributed earnings of its foreign subsidiaries because it intends to permanently re-invest these earnings outside the U.S. The cumulative amount of such undistributed earnings upon which no U.S. income taxes have been provided as of June 30, 2009 was immaterial.

As of June 30, 2009, the Company had approximately $49.4 million and $32.4 million in federal and state net operating loss carryforwards, respectively, which expire in varying amounts beginning in 2019 for federal purposes and 2015 for state purposes. Such net operating loss carryforwards included excess tax benefits from employee stock option exercises which, in accordance with SFAS 123R, had not been recorded in the Company's deferred tax assets. The Company will record approximately $7.3 million as a credit to additional paid in capital as and when such excess benefits are ultimately realized.

In addition, as of June 30, 2009, the Company had federal and state research and development tax credits of approximately $3.3 million and $4.1 million, respectively. The federal research credits will begin to expire in 2019 and the state research credits have no expiration date.

Based on the available objective evidence and history of losses, the Company has established a 100% valuation allowance against its domestic and certain foreign net deferred tax assets due to the uncertainty surrounding the realization of such assets.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**9. Income Taxes (Continued)**

In June 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with SFAS 109, *Accounting for Income Taxes* ("FAS 109") and prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. The Company adopted the provisions of FIN 48 effective July 1, 2007.

Under FIN 48, the impact of an uncertain income tax position on income tax expense must be recognized at the largest amount that is more-likely-than-not to be sustained. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. Upon review of the Company's reserves, the Company recognized a tax reserve for uncertain tax positions of $252,000 which was accounted for as a reduction to the July 1, 2007 balance of retained earnings.

The following is a rollforward of the Company's gross unrecognized tax benefit and liabilities associated with its uncertain tax positions at June 30, 2009 and 2008 (in thousands):

| | June 30, | |
|---|---|---|
| | 2009 | 2008 |
| Balance at beginning of year | $1,380 | $ 4,800 |
| Revisions to opening unrecognized tax benefits | — | (3,467) |
| Tax positions related to current year: | | |
| Additions | 551 | 291 |
| Reductions | — | — |
| Tax positions related to prior years: | | |
| Additions | 1,496 | — |
| Reductions | (63) | (244) |
| Settlements | — | — |
| Lapses in statutes of limitations | — | — |
| Balance at June 30, 2008 | $3,364 | $ 1,380 |

The calculation of unrecognized tax benefits involves dealing with uncertainties in the application of complex global tax regulations. Management regularly assesses the Company's tax positions in light of legislative, bilateral tax treaty, regulatory and judicial developments in the countries in which the Company does business. Management does not believe there will be any material changes in the unrecognized tax benefits within the next 12 months.

The Company's continuing practice is to recognize interest and/or penalties related to income tax matters in income tax expense. Such interest and penalties were immaterial as of June 30, 2009.

The Company files income tax returns in the United States, various states and foreign jurisdictions. Due to attributes being carried forward and utilized during open years, the statute of limitations remains open for the US federal jurisdiction and domestic states for tax years from 1999 and forward. The statute of limitations in France remains open from 2008, Hong Kong remains open from 2003 and Japan remains open from 2007.

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**10. Other Income, Net**

For the years ended June 30, 2009, 2008, and 2007, other income, net consisted of the following (in thousands):

| | Years ended June 30, | | |
|---|---|---|---|
| | 2009 | 2008 | 2007 |
| Interest income | $ 3,866 | $7,679 | $4,261 |
| Foreign currrency transaction gain | 169 | 153 | — |
| Realized gain on investments | — | 9 | — |
| Other | 95 | — | — |
| Total interest and other income | $ 4,130 | $7,841 | $4,261 |
| Interest expense | $ (10) | $ (173) | $ (157) |
| Foreign currrency transaction loss | — | — | (131) |
| Loss on asset disposition | (342) | (188) | (249) |
| Realized loss on investments | (288) | | — |
| State sales and local taxes | (231) | (295) | (194) |
| Fines and penalties | (177) | — | — |
| Other | — | (1) | — |
| Total interest and other expense | $(1,048) | $ (657) | $ (731) |
| Total other income, net | $ 3,082 | $7,184 | $3,530 |

**11. Related Party Transactions**

The Company recognized related party revenue of $1.6 million, $734,000, and $3.8 million, during the years ended June 30, 2009, 2008, and 2007, respectively, relating to products and services provided to Stanford. The Company's former Chief Executive Officer, Dr. John R. Adler, Jr. was a member of the Company's Board of Directors until his resignation effective July 19, 2009, and is an active member of the faculty at Stanford, where he holds the position of Professor of Neurosurgery and Radiation Oncology. At June 30, 2009 and 2008, amounts of $209,000 and $231,000, respectively, were recorded as deferred revenue and advances relating to related party payments made by Stanford. At June 30, 2009 and 2008, amounts of $9,000 and $0, respectively, were due from Stanford. The Company recorded $170,000 and $55,000 of expense during the years ended June 30, 2009 and 2008 relating to research grants with Stanford to support customer studies related to the Company's CyberKnife systems. No amounts relating to research grants with Stanford were recorded during the year ended June 30, 2007. The Company also has a license agreement with Stanford as disclosed in Note 8.

During the year ended June 30, 2009, the Company recorded $458,000 of expense related to contributions made to the CyberKnife Society, where Dr. Adler serves as its Chairman of the Board. No such expense was incurred during the years ended June 30, 2008 and 2007.

In April 2008, the Company entered into a consulting agreement with Dr. Adler, whereby Dr. Adler was entitled to receive a maximum compensation of $167,100 per year, payable in quarterly installments at the beginning of each quarter beginning on April 1, 2008.

In April 2009, the Company entered into a new consulting agreement with Dr. Adler, which terminated the prior consulting agreements discussed above. Under the new consulting agreement,

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**11. Related Party Transactions (Continued)**

Dr. Adler is entitled to receive a maximum compensation of $168,100 per year, payable in quarterly installments at the beginning of each quarter beginning on April 1, 2009. This agreement has a term of one year and will renew for successive one-year periods, unless either party provides 30 days' written notice of termination prior to the expiration of each one-year period. The Company recognized consulting expense for Dr. Adler in the amounts of $167,000, $154,000, and $178,000 for the years ended June 30, 2009, 2008, and 2007,respectively, pursuant to these agreements.

The Company recognized related party revenue of $1.2 million and $5.3 million during the years ended June 30, 2008 and 2007, respectively, relating to products and services provided to Meditec. Meditec's parent, Marubeni Corporation, was a common stockholder of the Company. Marubeni Corporation transferred its interest in the Company during September 2007 and was no longer a stockholder of record of the Company as of June 30, 2008.

**12. Secured Credit Line**

In November 2008, the Company obtained a line of credit with UBS in conjunction with the Rights Agreement (see Note 3). The line of credit is due on demand and allows for borrowings of up to 75% of par value of the Company's ARS. The line of credit is secured by the Company's ARS, which have been pledged as Collateral. Advances under this agreement bear interest with interest payments payable monthly. No borrowings were outstanding during the year ended June 30, 2009.

To the extent that there are borrowings outstanding under the line of credit, the following provisions will apply. All interest, dividends, distributions, premiums, other income and payments received into the ARS investment account at UBS will be automatically transferred to UBS as payments on the line of credit. Additionally, proceeds from any liquidation, redemption, sale or other disposition of all or part of the ARS will be automatically transferred to UBS as payments. If these payments are insufficient to pay all accrued interest by the monthly due date, then UBS will either require the Company to make additional interest payments or, at UBS's discretion, capitalize unpaid interest as an additional advance. UBS's intent is to cause the interest rate payable by the Company to be equal to the weighted average interest or dividend rate payable to the Company on the ARS pledged as collateral. Upon cancellation of the line of credit, the Company will be reimbursed for any amount paid in interest on the line of credit that exceeds the income on the ARS.

Advances on this line of credit may be used to fund working capital requirements, capital expenditures or other general corporate purposes, except that they may not be used to purchase, trade or carry any securities or to repay debt incurred to purchase, trade or carry any securities.

**13. Restructuring**

On January 29, 2009, the Company announced a Workforce Alignment Plan ("Plan") to reduce headcount and improve efficiency and productivity. As a result of the Plan, the Company reduced its headcount by approximately 60 positions or approximately 13% of the Company's U.S. workforce. Most of the affected jobs were located at the Company's Sunnyvale, CA headquarters. All employees affected by the Plan were notified on January 28, 2009.

For the year ended June 30, 2009, the Company recorded restructuring charges of approximately $1.7 million. Restructuring charges of approximately $378,000, $447,000, $344,000, and $495,000 were recognized in cost of revenue, selling and marketing expense, research and development expense, and

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**13. Restructuring (Continued)**

general and administrative expense, respectively, for the year ended June 30, 2009. These amounts relate to severance, other termination benefits and outplacement services. The following table summarizes the severance expense activity, including payments of severance amounts accrued. No amounts are included in accrued compensation in the consolidated balance sheet, as of June 30, 2009, as all accrued amounts were paid in the year ended June 30, 2009:

| | |
|---|---|
| Restructuring charges accrued as of January 29, 2009 | $ 1,509 |
| Cash payments made | (1,664) |
| Adjustments | 155 |
| Balance as of June 30, 2009 | $ — |

**14. Employee Benefit Plans**

The Company's employee savings and retirement plan is qualified under Section 401(k) of the United States Internal Revenue Code. Employees may make voluntary, tax-deferred contributions to the 401(k) Plan up to the statutorily prescribed annual limit. The Company makes discretionary matching contributions to the 401(k) Plan on behalf of employees up to the limit determined by the Board of Directors. The Company contributed $904,000, $845,000, and $730,000 to the 401(k) Plan during the years ended June 30, 2009, 2008, and 2007, respectively.

**15. Quarterly Financial Data (unaudited)**

| | Quarters ended | | | |
|---|---|---|---|---|
| | September 30, 2008 | December 31, 2008 | March 31, 2009 | June 30, 2009 |
| | (in thousands, except per share data) | | | |
| Net revenue | $ 55,857 | $ 57,637 | $ 61,301 | $ 58,803 |
| Gross profit | $ 28,429 | $ 29,409 | $ 30,362 | $ 27,090 |
| Net income (loss) | $ (3,179) | $ 1,350 | $ 1,216 | $ 1,222 |
| Basic net income (loss) per share | $ (0.06) | $ 0.02 | $ 0.02 | $ 0.02 |
| Diluted net income (loss) per share | $ (0.06) | $ 0.02 | $ 0.02 | $ 0.02 |
| Shares used in basic per share calculation | 54,625 | 55,064 | 55,724 | 56,238 |
| Shares used in diluted per share calculation | 54,625 | 58,267 | 58,772 | 59,324 |

**Accuray Incorporated**

**Notes to Consolidated Financial Statements (Continued)**

**15. Quarterly Financial Data (unaudited) (Continued)**

| | Quarters ended | | | |
|---|---|---|---|---|
| | September 30, 2007 | December 31, 2007 | March 31, 2008 | June 30, 2008 |
| | (in thousands, except per share data) | | | |
| Net revenue | $ 48,646 | $ 52,038 | $ 58,758 | $ 50,939 |
| Gross profit | $ 25,911 | $ 27,862 | $ 26,283 | $ 26,896 |
| Net income | $ 2,265 | $ 2,343 | $ 584 | $ 191 |
| Basic net income per share | $ 0.04 | $ 0.04 | $ 0.01 | $ — |
| Diluted net income per share | $ 0.04 | $ 0.04 | $ 0.01 | $ — |
| Shares used in basic per share calculation | 54,025 | 54,737 | 54,856 | 54,506 |
| Shares used in diluted per share calculation | 61,154 | 61,293 | 60,125 | 58,854 |

**16. Subsequent Events**

*Securities Class Action and Shareholder Derivative Lawsuits*

On July 22, 2009, a securities class action lawsuit was filed in the U.S. District Court for the Northern District of California against the Company and certain of its current and former directors and officers. On August 7, 2009 and August 9, 2009, two securities class action complaints, both similar to the one filed on July 22, 2009, were filed against the same defendants in the same court. All of these complaints generally allege that the Company and the individual defendants made false or misleading public statements regarding the Company's operations and seeks unspecified monetary damages and other relief. As of June 30, 2009, the Company has not recorded any liabilities as the Company is unable to estimate any potential liability.

On August 5, 2009, a purported shareholder derivative lawsuit was filed in Santa Clara County Superior Court against certain of the Company's current and former officers and directors. The Company is named as a nominal defendant. The complaint generally alleges that the defendants breached their fiduciary duties by misrepresenting and/or failing to disclose material information regarding the Company's business and financial performance, and seeks unspecified monetary damages and other relief.

On September 3, 2009, Best Medical International, Inc. (Best Medical) filed a lawsuit against the Company claiming the Company induced certain individuals to leave the employment of Best Medical and join the Company in order to gain access to Best Medical's confidential information and trade secrets. They are seeking monetary damages and other relief. At this time the Company does not have enough information to estimate what, if any, financial impact this claim will have.

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

Not applicable.

## Item 9A. CONTROLS AND PROCEDURES

### (a) Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of June 30, 2009. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that as of the end of the period covered by our Annual Report on Form 10-K, our disclosure controls and procedures were effective in providing reasonable assurance that information we are required to disclose in reports that we file or submit under the Securities Exchange Act of 1934 is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure and that such information is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms.

### (b) Internal Control over Financial Reporting

*Management's Annual Report*

Management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) of the Exchange Act. Under the supervision and with the participation of the Chief Executive Officer and Chief Financial Officer, management conducted an evaluation of the effectiveness of our internal control over financial reporting based upon the framework in "Internal Control—Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, management concluded that our internal control over financial reporting was effective as of June 30, 2009, based upon the framework in "Internal Control—Integrated Framework".

Grant Thornton LLP, an independent registered public accounting firm, has audited the consolidated financial statements included in this Annual Report on Form 10-K and, as part of the audit, has issued a report, included herein, on the effectiveness of our internal controls over financial reporting as of June 30, 2009.

*Previously Reported Material Weaknesses*

A material weakness is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of our annual or interim financial statements will not be prevented or detected. It was determined that a material weakness existed in our internal controls over financial reporting relating to: (1) a combination of inadequate communication and review procedures, and misapplication of accounting policies with respect to our accounting for revenue transactions, as previously reported in our Quarterly Report on Form 10-Q for the fiscal quarters ended September 27, 2008, December 28, 2008, and March 28, 2009, and in our Annual Report on Form 10-K for the fiscal year ended June 30, 2008; and (2) handling and accounting for certain inventory items, as previously reported in our Quarterly Report on Form 10-Q for the fiscal quarters ended September 27, 2008, December 28, 2008, March 28, 2009.

In response to the material weaknesses in internal controls described above, we took measures to improve our processes and procedures related to the accounting for revenue transactions, including but not limited to: hiring additional qualified individuals in the finance and accounting organizations and increasing supervision and training of our finance personnel and personnel in areas related to

inventory; strengthening our processes and procedures related to complex revenue recognition, as well as the importance of record retention and adhering to established processes; revising certain processes and procedures for inventory handling and the reporting of inventory transactions; and improving electronic systems for inventory management to more efficiently and timely execute and record inventory handling.

Based on the measures taken and implemented, management has determined that the material weaknesses described above have been successfully remediated as of June 30, 2009.

*Inherent Limitations of Internal Controls*

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON INTERNAL CONTROL OVER FINANCIAL REPORTING

To the Board of Directors and Stockholders
Accuray Incorporated

We have audited Accuray Incorporated and subsidiaries' (the "Company") internal control over financial reporting as of June 30, 2009, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). 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 Report of Management on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). 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.

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.

In our opinion, Accuray Incorporated and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of June 30, 2009, based on criteria established in *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), the accompanying consolidated balance sheets of Accuray Incorporated and subsidiaries as of June 30, 2009 and 2008 and the related consolidated statements of operations, stockholders' equity (deficiency), and cash flows for each of the three years in the period ended June 30, 2009, and our report dated September 8, 2009, expressed an unqualified opinion thereon.

/s/ GRANT THORNTON LLP
San Francisco, California
September 8, 2009

**Item 9B. OTHER INFORMATION**

Not applicable.

## PART III

### Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

**Directors, Executive Officers and Corporate Governance**

The information in our 2009 Proxy Statement regarding Directors and Executive officers appearing under the headings "Proposal One—Election of Directors," "Corporate Governance and Board of Directors Matters," "Executive Officers" and "Section 16(a) Beneficial Ownership Reporting Compliance" is incorporated herein by reference.

In addition, the information in our 2009 Proxy Statement regarding the director nomination process, the Audit Committee financial expert and the identification of the Audit Committee members appearing under the heading "Corporate Governance and Board of Directors Matters" is incorporated herein by reference.

There have been no material changes to the procedures by which stockholders may recommend nominees to our Board of Directors.

**Code of Conduct and Ethics**

We have adopted a Code of Conduct and Ethics that applies to all employees including our principal executive officer and principal financial officer. The full texts of our codes of business conduct and ethics are posted on our website at *www.accuray.com* under the Investor Relations section. The inclusion of our web site address in this report does not include or incorporate by reference the information on our web site into this report.

### Item 11. EXECUTIVE COMPENSATION

The information in our 2009 Proxy Statement appearing under the headings "Executive Compensation," "Report of the Compensation Committee," "Compensation Discussion and Analysis," and "Compensation Committee Interlocks and Insider Information" is incorporated herein by reference.

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

The information in our 2009 Proxy Statement appearing under the heading "Security Ownership of Certain Beneficial Owners and Management" is incorporated herein by reference.

***Equity Compensation Plan Information***

The following table sets forth as of June 30, 2009 certain information regarding our equity compensation plans. All of our equity compensation plans have been approved by our security holders.

| | A | B | C |
|---|---|---|---|
| Plan category | Number of securities to be issued upon exercise of outstanding options, warrants, and rights | Weighted-average exercise price of outstanding options, warrants, and rights | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in Column A)(1) |
| Equity compensation plans approved by security holders | 8,455,316 | $ 5.70 | 2,645,757 |
| Equity compensation plans not approved by security holders | — | — | — |
| Total | 8,455,316 | $ 5.70 | 2,645,757 |

(1) Includes securities to be issued upon vesting of 519,609 restricted stock units at a grant date fair value of $18.15.

**Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information in our 2009 Proxy Statement appearing under the headings "Certain Relationships and Related Party Transactions" and "Corporate Governance—Director Independence" is incorporated herein by reference.

**Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information in our 2009 Proxy Statement appearing under the headings "Proposal Two—Ratification of Appointment of Independent Registered Public Accounting Firm—Audit and Non-Audit Services" and "Proposal Two—Ratification of Appointment of Independent Registered Public Accounting Firm—Audit Committee Pre-Approval Policies and Procedures" is incorporated herein by reference.

**PART IV**

**Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES**

**(a)** We have the filed the following documents as part of this report:

1. **Consolidated Financial Statements** (as set forth in Item 8)

Report of Independent Registered Public Accounting Firm
Consolidated Balance Sheets
Consolidated Statements of Operations
Consolidated Statements of Stockholders' Equity (Deficiency)
Consolidated Statements of Cash Flows
Notes to Consolidated Financial Statements

2. **Financial Statement Schedule**

**SCHEDULE II**
**Valuation and Qualifying Accounts**

| | Beginning Balance | Charges (Deductions) to Operations | Write-offs | Ending Balance |
|---|---|---|---|---|
| Accounts receivable allowances | | | | |
| Year ended June 30, 2007 | $ 20 | 2 | (2) | $ 20 |
| Year ended June 30, 2008 | $ 20 | 30 | (23) | $ 27 |
| Year ended June 30, 2009 | $ 27 | 496 | (39) | $ 484 |

All other schedules have been omitted because they are not required, not applicable, or the required information is otherwise included.

3. **Exhibits**

The following exhibits are incorporated by reference or filed herewith.

| Exhibit No. | |
|---|---|
| 2.1 | Agreement and Plan of Merger of Accuray Incorporated, a Delaware Corporation, and Accuray Incorporated, a California Corporation, dated as of February 3, 2007.(1) |
| 3.2 | Amended and Restated Certificate of Incorporation of Registrant.(1) |
| 3.4 | Amended and Restated Bylaws of Registrant.(1) |
| 4.2 | Investors' Rights Agreement dated October 30, 2006 by and between Registrant and purchasers of Series A Preferred Stock, Series A1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and certain holders of common stock.(1) |
| 4.3 | Form of Common Stock Certificate.(1) |
| 10.1 | Industrial Complex Lease dated July 14, 2003 by and between Registrant and MP Caribbean, Inc., as amended by the First Amendment to Industrial Complex Lease effective as of December 9, 2004 and the Second Amendment to Industrial Complex Lease effective as of September 25, 2006.(1) |
| 10.1(a) | Third Amendment to Industrial Complex Lease dated January 16, 2007.(2) |
| 10.2 | Standard Industrial Lease effective as of June 30, 2005 by and between Registrant and The Realty Associates Fund III, L.P.(1) |
| 10.3* | Accuray Incorporated 1993 Stock Option Plan and forms of agreements relating thereto.(1) |
| 10.4* | Accuray Incorporated 1998 Equity Incentive Plan and forms of agreements relating thereto.(1) |
| 10.5* | Accuray Incorporated 2007 Incentive Award Plan and forms of agreements relating thereto.(1) |
| 10.6* | Accuray Incorporated 2007 Employee Stock Purchase Plan and forms of agreements relating thereto.(1) |
| 10.7* | Form of Indemnification Agreement by and between Registrant and each of its directors and executive officers. |

| Exhibit No. | |
|---|---|
| 10.8* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Euan S. Thomson, Ph.D.(3) |
| 10.9* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Chris A. Raanes.(3) |
| 10.10* | Employment Terms Letter dated November 10, 2006 by and between Registrant and Robert E. McNamara.(1) |
| 10.11* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Eric Lindquist.(3) |
| 10.12* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Wade Hampton.(3) |
| 10.13 | License Agreement effective as of December 12, 2004 by and between Registrant and American Science and Engineering, Inc.(1) |
| 10.14 | Assignment & Assumption of License and Consent by Supplier effective as of January 10, 2005 by and among Registrant, American Science and Engineering, Inc., Yuri Batygin, and Anatoliy Zapreier.(1) |
| 10.15 | Nonexclusive End-User Software License Agreement dated September 9, 2005 by and between Registrant and The Regents of the University of California.(1) |
| 10.16 | License Agreement effective as of July 9, 1997 by and between Registrant and The Board of Trustees of the Leland Stanford Junior University.(1) |
| 10.17 | Non-Exclusive System Partner Agreement effective as of September 23, 2005 by and between Registrant and KUKA Robotics Corporation.(1) |
| 10.18 | Asset Purchase Agreement effective as of December 12, 2004 by and between the Registrant and American Science and Engineering, Inc.(1) |
| 10.19 | Exclusive Manufacturing Agreement effective as of November 29, 2006 by and between the Registrant and Forte Automation Systems, Inc.(1) |
| 10.20† | Patent and Trademark License Agreement effective as of November 29, 2006 by and between the Registrant and Forte Automation Systems, Inc.(1) |
| 10.21† | †License and Development Agreement dated April 27, 2007 by and between the Registrant and CyberHeart, Inc.(2) |
| 10.22 | Independent Contractor Agreement effective as of April 1, 2009 by and between Registrant and John R. Adler, M.D. |
| 10.23* | Employment Terms Letter dated May 3, 2007 by and between Registrant and Christopher Mitchell.(2) |
| 10.24* | Amended and Restated Employment Terms Letter effective as of October 22, 2008 by and between Registrant and Theresa Dadone.(3) |
| 10.25* | General Release and Separation Agreement dated October 22, 2008 by and between Registrant and Robert McNamara.(4) |
| 10.26* | General Release and Separation Agreement dated October 27, 2008 by and between Registrant and Christopher Mitchell.(4) |

| Exhibit No. | |
|---|---|
| 10.27* | Employment Terms Letter dated December 1, 2008 by and between Registrant and Derek Bertocci.(3) |
| 10.28* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Holly Grey.(3) |
| 10.29 | UBS Repurchase Offer by and between the Company and UBS Financial Services Inc., dated November 12, 2008.(3) |
| 10.30* | Employment Letter Agreement dated May 18, 2009 by and between Registrant and Darren J. Milliken. |
| 21.1 | List of subsidiaries. |
| 23.1 | Consent of Grant Thornton LLP, independent registered public accounting firm. |
| 24.1 | Power of Attorney (incorporated by reference to the signature page of this annual report on Form 10-K) |
| 31.1 | Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2 | Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.1 | Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

(1) Incorporated by reference to Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on February 7, 2007 (No. 333-138622).

(2) Incorporated by reference to Registrant's Form 10-K for the fiscal year ended June 30, 2007 filed with the Securities and Exchange Commission on September 4, 2007.

(3) Incorporated by reference to Registrant's Form 10-Q for the fiscal quarter ended December 27, 2008 filed with the Securities and Exchange Commission on February 5, 2009.

(4) Incorporated by reference to Registrant's Form 10-Q for the fiscal quarter ended September 27, 2008 filed with the Securities and Exchange Commission on December 19, 2008.

* Management contract or compensatory plan or arrangement.

† Portions of the exhibit have been omitted pursuant to a request for confidential treatment, which has been granted. The omitted information has been filed separately with the Securities and Exchange Commission.

† † Portions of the exhibit have been omitted pursuant to a request for confidential treatment. The omitted information has been filed separately with the Securities and Exchange Commission.

The certifications attached as Exhibit 32.1 and Exhibit 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Accuray Incorporated under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date of this Annual Report on Form 10-K, irrespective of any general incorporation language contained in such filing.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Sunnyvale, State of California, on the 8 th day of September 2009.

**ACCURAY INCORPORATED**

By: /s/ EUAN S. THOMSON, PH.D.

Euan S. Thomson, Ph.D.
*President and Chief Executive Officer*

By: /s/ DEREK BERTOCCI

Derek Bertocci
*Senior Vice President and Chief Financial Officer*

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each individual whose signature appears below constitutes and appoints Euan S. Thomson, Ph.D. and Derek Bertocci, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and any of them or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| /s/ EUAN S. THOMSON, PH.D<br>Euan S. Thomson, Ph.D | President and Chief Executive Officer and Director (principal executive officer) | September 8, 2009 |
| /s/ DEREK BERTOCCI<br>Derek Bertocci | Senior Vice President, Chief Financial Officer (principal financial and accounting officer) | September 8, 2009 |
| /s/ WAYNE WU<br>Wayne Wu | Chairperson of the Board and Director | September 8, 2009 |

| Signature | Title | Date |
|---|---|---|
| /s/ ELIZABETH DÁVILA<br>Elizabeth Dávila | Vice chairperson of the Board and Director | September 8, 2009 |
| /s/ JOHN WAREHAM<br>John Wareham | Director | September 8, 2009 |
| /s/ ROBERT S. WEISS<br>Robert S. Weiss | Director | September 8, 2009 |
| /s/ LI YU<br>Li Yu | Director | September 8, 2009 |

## Exhibit Index

| Exhibit No. | |
|---|---|
| 2.1 | Agreement and Plan of Merger of Accuray Incorporated, a Delaware Corporation, and Accuray Incorporated, a California Corporation, dated as of February 3, 2007.(1) |
| 3.2 | Amended and Restated Certificate of Incorporation of Registrant.(1) |
| 3.4 | Amended and Restated Bylaws of Registrant.(1) |
| 4.2 | Investors' Rights Agreement dated October 30, 2006 by and between Registrant and purchasers of Series A Preferred Stock, Series A1 Preferred Stock, Series B Preferred Stock and Series C Preferred Stock and certain holders of common stock.(1) |
| 4.3 | Form of Common Stock Certificate.(1) |
| 10.1 | Industrial Complex Lease dated July 14, 2003 by and between Registrant and MP Caribbean, Inc., as amended by the First Amendment to Industrial Complex Lease effective as of December 9, 2004 and the Second Amendment to Industrial Complex Lease effective as of September 25, 2006.(1) |
| 10.1(a) | Third Amendment to Industrial Complex Lease dated January 16, 2007.(2) |
| 10.2 | Standard Industrial Lease effective as of June 30, 2005 by and between Registrant and The Realty Associates Fund III, L.P.(1) |
| 10.3* | Accuray Incorporated 1993 Stock Option Plan and forms of agreements relating thereto.(1) |
| 10.4* | Accuray Incorporated 1998 Equity Incentive Plan and forms of agreements relating thereto.(1) |
| 10.5* | Accuray Incorporated 2007 Incentive Award Plan and forms of agreements relating thereto.(1) |
| 10.6* | Accuray Incorporated 2007 Employee Stock Purchase Plan and forms of agreements relating thereto.(1) |
| 10.7* | Form of Indemnification Agreement by and between Registrant and each of its directors and executive officers. |
| 10.8* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Euan S. Thomson, Ph.D.(3) |
| 10.9* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Chris A. Raanes.(3) |
| 10.10* | Employment Terms Letter dated November 10, 2006 by and between Registrant and Robert E. McNamara.(1) |
| 10.11* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Eric Lindquist.(3) |
| 10.12* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Wade Hampton.(3) |
| 10.13 | License Agreement effective as of December 12, 2004 by and between Registrant and American Science and Engineering, Inc.(1) |

| Exhibit No. | |
|---|---|
| 10.14 | Assignment & Assumption of License and Consent by Supplier effective as of January 10, 2005 by and among Registrant, American Science and Engineering, Inc., Yuri Batygin, and Anatoliy Zapreier.(1) |
| 10.15 | Nonexclusive End-User Software License Agreement dated September 9, 2005 by and between Registrant and The Regents of the University of California.(1) |
| 10.16 | License Agreement effective as of July 9, 1997 by and between Registrant and The Board of Trustees of the Leland Stanford Junior University.(1) |
| 10.17 | Non-Exclusive System Partner Agreement effective as of September 23, 2005 by and between Registrant and KUKA Robotics Corporation.(1) |
| 10.18 | Asset Purchase Agreement effective as of December 12, 2004 by and between the Registrant and American Science and Engineering, Inc.(1) |
| 10.19 | Exclusive Manufacturing Agreement effective as of November 29, 2006 by and between the Registrant and Forte Automation Systems, Inc.(1) |
| 10.20† | Patent and Trademark License Agreement effective as of November 29, 2006 by and between the Registrant and Forte Automation Systems, Inc.(1) |
| 10.21† | †License and Development Agreement dated April 27, 2007 by and between the Registrant and CyberHeart, Inc.(2) |
| 10.22 | Independent Contractor Agreement effective as of April 1, 2009 by and between Registrant and John R. Adler, M.D. |
| 10.23* | Employment Terms Letter dated May 3, 2007 by and between Registrant and Christopher Mitchell.(2) |
| 10.24* | Amended and Restated Employment Terms Letter effective as of October 22, 2008 by and between Registrant and Theresa Dadone.(3) |
| 10.25* | General Release and Separation Agreement dated October 22, 2008 by and between Registrant and Robert McNamara.(4) |
| 10.26* | General Release and Separation Agreement dated October 27, 2008 by and between Registrant and Christopher Mitchell.(4) |
| 10.27* | Employment Terms Letter dated December 1, 2008 by and between Registrant and Derek Bertocci.(3) |
| 10.28* | Amended and Restated Employment Terms Letter dated October 22, 2008 by and between Registrant and Holly Grey.(3) |
| 10.29 | UBS Repurchase Offer by and between the Company and UBS Financial Services Inc., dated November 12, 2008.(3) |
| 10.30* | Employment Letter Agreement dated May 18, 2009 by and between Registrant and Darren J. Milliken. |
| 21.1 | List of subsidiaries. |
| 23.1 | Consent of Grant Thornton LLP, independent registered public accounting firm. |
| 24.1 | Power of Attorney (incorporated by reference to the signature page of this annual report on Form 10-K) |

| Exhibit No. | |
|---|---|
| 31.1 | Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2 | Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32.1 | Certification of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

(1) Incorporated by reference to Registrant's Registration Statement on Form S-1 filed with the Securities and Exchange Commission on February 7, 2007 (No. 333-138622).

(2) Incorporated by reference to Registrant's Form 10-K for the fiscal year ended June 30, 2007 filed with the Securities and Exchange Commission on September 4, 2007.

(3) Incorporated by reference to Registrant's Form 10-Q for the fiscal quarter ended December 27, 2008 filed with the Securities and Exchange Commission on February 5, 2009.

(4) Incorporated by reference to Registrant's Form 10-Q for the fiscal quarter ended September 27, 2008 filed with the Securities and Exchange Commission on December 19, 2008.

* Management contract or compensatory plan or arrangement.

† Portions of the exhibit have been omitted pursuant to a request for confidential treatment, which has been granted. The omitted information has been filed separately with the Securities and Exchange Commission.

† † Portions of the exhibit have been omitted pursuant to a request for confidential treatment. The omitted information has been filed separately with the Securities and Exchange Commission.

The certifications attached as Exhibit 32.1 and Exhibit 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Accuray Incorporated under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date of this Annual Report on Form 10-K, irrespective of any general incorporation language contained in such filing.

**Exhibit 10.7**

Initials: Interested Party _____
Accuray _____


**INDEMNIFICATION AGREEMENT**

This Indemnification Agreement ("Agreement") is effective as of , 2009 by and between Accuray Incorporated, a Delaware corporation (the "Company"), and ("Indemnitee").

A. The Company recognizes the continued difficulty in obtaining liability insurance for its directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates, the significant increases in the cost of such insurance and the general reductions in the coverage of such insurance.

B. The Company further recognizes the substantial increase in corporate litigation in general, subjecting directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates to expensive litigation risks at the same time as the availability and coverage of liability insurance has been severely limited.

C. The current protection available to directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates of the Company may not be adequate under the present circumstances, and directors, officers, employees, controlling persons, fiduciaries and other agents and affiliates of the Company (or persons who may be alleged or deemed to be the same), including the Indemnitee, may not be willing to continue to serve or be associated with the Company in such capacities without additional protection.

D. The Company (a) desires to attract and retain the involvement of highly qualified persons, such as Indemnitee, to serve and be associated with the Company, and (b) accordingly, wishes to provide for the indemnification and advancement of expenses to the Indemnitee to the maximum extent permitted by law.

E. In view of the considerations set forth above, the Company desires that Indemnitee shall be indemnified and advanced expenses by the Company as set forth herein. In consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Certain Definitions.**

(a) "*Change in Control*" shall be deemed to have occurred if, on or after the date of this Agreement, (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company acting in such capacity or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Company

representing more than 50% of the total voting power represented by the Company's then outstanding Voting Securities (as defined below), (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constitute the Board of Directors of the Company and any new director whose election by the Board of Directors or nomination for election by the Company's stockholders was approved by a vote of at least two thirds (2/3) of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof, or (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation other than a merger or consolidation which would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least 80% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, or (iv) the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of (in one transaction or a series of related transactions) all or substantially all of the Company's assets.

(b) "*Claim*" shall mean with respect to a Covered Event (as defined below): any threatened, asserted, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, or any hearing, inquiry or investigation that Indemnitee in good faith believes might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism, whether civil, criminal, administrative, investigative or other.

(c) References to the "*Company*" shall include, in addition to Accuray Incorporated, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger to which Accuray Incorporated (or any of its wholly owned subsidiaries) is a party, which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees, agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee, agent or fiduciary of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(d) "*Covered Event*" shall mean any event or occurrence related to the fact that Indemnitee is or was a director, officer, employee, agent or fiduciary of the Company, or any subsidiary of the Company, or is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action or inaction on the part of Indemnitee while serving in such capacity.

(e) "*Expenses*" shall mean any and all direct and indirect costs, losses, claims, damages, fees, expenses and liabilities, joint or several (including attorneys' fees and all other costs, expenses and obligations incurred in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, to be a witness in or to participate in, any action, suit, proceeding, alternative dispute resolution mechanism, hearing, inquiry or investigation), judgments, fines, penalties and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred, of any Claim and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement.

(f) "*Expense Advance*" shall mean a payment to Indemnitee pursuant to Section 3 of Expenses in advance of the settlement of or final judgement in any action, suit, proceeding or alternative dispute resolution mechanism, hearing, inquiry or investigation, which constitutes a Claim.

(g) "*Independent Legal Counsel*" shall mean an attorney or firm of attorneys, selected in accordance with the provisions of Section 2(d) hereof, who shall not have otherwise performed services for the Company or Indemnitee within the last three (3) years (other than with respect to matters concerning the rights of Indemnitee under this Agreement, or of other indemnitees under similar indemnity agreements).

(h) References to "*other enterprises*" shall include employee benefit plans; references to "*fines"* shall include any excise taxes assessed on Indemnitee with respect to an employee benefit plan; and references to " *serving at the request of the Company*" shall include any service as a director, officer, employee, agent or fiduciary of the Company which imposes duties on, or involves services by, such director, officer, employee, agent or fiduciary with respect to an employee benefit plan, its participants or its beneficiaries; and if Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan, Indemnitee shall be deemed to have acted in a manner "*not opposed to the best interests of the Company*" as referred to in this Agreement.

(i) "*Reviewing Party*" shall mean, subject to the provisions of Section 2(d), any person or body appointed by the Board of Directors in accordance with applicable law to review the Company's obligations hereunder and under applicable law, which may include a member or members of the Company's Board of Directors, Independent Legal Counsel or any other person or body not a party to the particular Claim for which Indemnitee is seeking indemnification, exoneration or hold harmless rights.

(j) "*Section*" refers to a section of this Agreement unless otherwise indicated.

(k) "*Voting Securities*" shall mean any securities of the Company that vote generally in the election of directors.

**2. Indemnification.**

(a) Indemnification of Expenses. Subject to the provisions of Section 2(b) below, the Company shall indemnify, exonerate or hold harmless Indemnitee for Expenses to the fullest extent permitted by law if Indemnitee was or is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, any Claim (whether by reason of or arising in part out of a Covered Event), including all interest, assessments and other charges incurred in connection with or in respect of such Expenses.

(b) Review of Indemnification Obligations. Notwithstanding the foregoing, in the event any Reviewing Party shall have determined (in a written opinion, in any case in which Independent Legal Counsel is the Reviewing Party) that Indemnitee is not entitled to be indemnified, exonerated or held harmless hereunder under applicable law, (i) the Company shall have no further obligation under Section 2(a) to make any payments to Indemnitee not made prior to such determination by such Reviewing Party and (ii) the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all Expenses theretofore paid in indemnifying, exonerating or holding harmless Indemnitee (within thirty (30) days after such determination); *provided, however*, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee is entitled to be indemnified, exonerated or held harmless hereunder under applicable law, any determination made by any Reviewing Party that Indemnitee is not entitled to be indemnified hereunder under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expenses theretofore paid in indemnifying, exonerating or holding harmless Indemnitee until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Indemnitee's obligation to reimburse the Company for any Expenses shall be unsecured and no interest shall be charged thereon.

(c) Indemnitee Rights on Unfavorable Determination; Binding Effect. If any Reviewing Party determines that Indemnitee substantively is not entitled to be indemnified, exonerated or held harmless hereunder in whole or in part under applicable law, Indemnitee shall have the right to commence litigation seeking an initial determination by the court or challenging any such determination by such Reviewing Party or any aspect thereof, including the legal or factual bases therefor, and, subject to the provisions of Section 15, the Company hereby consents to service of process and to appear in any such proceeding. Absent such litigation, any determination by any Reviewing Party shall be conclusive and binding on the Company and Indemnitee.

(d) Selection of Reviewing Party; Change in Control. If there has not been a Change in Control, any Reviewing Party shall be selected by the Board of Directors, and if there has been such a Change in Control (other than a Change in Control which has been approved by a majority of the Company's Board of Directors who were directors immediately prior to such Change in Control), any Reviewing Party with respect to all matters thereafter arising concerning Indemnitee's indemnification, exoneration or hold harmless rights for Expenses under this

Agreement or any other agreement or under the Company's Certificate of Incorporation or bylaws as now or hereafter in effect, or under any other applicable law, if desired by Indemnitee, shall be Independent Legal Counsel selected by the Indemnitee and approved by Company (which approval shall not be unreasonably withheld). Such counsel, among other things, shall render its written opinion to the Company and Indemnitee as to whether and to what extent Indemnitee would be entitled to be indemnified, exonerated or held harmless hereunder under applicable law and the Company agrees to abide by such opinion. The Company agrees to pay the reasonable fees of the Independent Legal Counsel referred to above and to fully indemnify, exonerate and hold harmless such counsel against any and all expenses (including attorneys' fees), claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto. Notwithstanding any other provision of this Agreement, the Company shall not be required to pay Expenses of more than one Independent Legal Counsel in connection with all matters concerning a single Indemnitee, and such Independent Legal Counsel shall be the Independent Legal Counsel for any or all other Indemnitees unless (i) the Company otherwise determines or (ii) any Indemnitee shall provide a written statement setting forth in detail a reasonable objection to such Independent Legal Counsel representing other Indemnitees.

(e) Mandatory Payment of Expenses. Notwithstanding any other provision of this Agreement other than Section 10 hereof, to the extent that Indemnitee has been successful on the merits or otherwise, including, without limitation, the dismissal of an action without prejudice, in defense of any Claim, Indemnitee shall be indemnified, exonerated and held harmless against all Expenses incurred by Indemnitee in connection therewith.

(f) Contribution. If the indemnification, exoneration or hold harmless rights provided for in this Agreement is for any reason held by a court of competent jurisdiction to be unavailable to an Indemnitee, then in lieu of indemnifying, exonerating or holding harmless Indemnitee thereunder, the Company shall contribute to the amount paid or payable by Indemnitee as a result of such Expenses (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and Indemnitee, or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and Indemnitee in connection with the action or inaction which resulted in such Expenses, as well as any other relevant equitable considerations. In connection with the registration of the Company's securities, the relative benefits received by the Company and Indemnitee shall be deemed to be in the same respective proportions that the net proceeds from the offering (before deducting expenses) received by the Company and Indemnitee, in each case as set forth in the table on the cover page of the applicable prospectus, bear to the aggregate public offering price of the securities so offered. The relative fault of the Company and Indemnitee shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and Indemnitee agree that it would not be just and equitable if contribution pursuant to this Section 2(f) were determined by pro rata or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph. In connection with the registration of the Company's securities, in no event shall Indemnitee be required to contribute any amount under this Section 2(f) in excess of the net proceeds received by Indemnitee from its sale of securities under such registration statement. No person found guilty of fraudulent misrepresentation (within the meaning of Section 11(1) of the Securities Act) shall be entitled to contribution from any person who was not found guilty of such fraudulent misrepresentation.

**3. Expense Advances.**

(a) Obligation to Make Expense Advances. The Company shall make Expense Advances to Indemnitee upon receipt of a written undertaking by or on behalf of the Indemnitee to repay such amounts if it shall ultimately be determined that the Indemnitee is not entitled to be indemnified, exonerated or held harmless therefor by the Company.

(b) Form of Undertaking. Any written undertaking by the Indemnitee to repay any Expense Advances hereunder shall be unsecured and no interest shall be charged thereon.

**4. Procedures for Indemnification and Expense Advances.**

(a) Timing of Payments. All payments of Expenses (including without limitation Expense Advances) by the Company to the Indemnitee pursuant to this Agreement shall be made to the fullest extent permitted by law as soon as practicable after written demand by Indemnitee therefor is presented to the Company, but in no event later than forty-five (45) days after such written demand by Indemnitee is presented to the Company, except in the case of Expense Advances, which shall be made no later than twenty (20) days after such written demand by Indemnitee is presented to the Company.

(b) Notice/Cooperation by Indemnitee. Indemnitee shall, as a condition precedent to Indemnitee's right to be indemnified, exonerated or held harmless or Indemnitee's right to receive Expense Advances under this Agreement, give the Company notice in writing as soon as practicable of any Claim made against Indemnitee for which indemnification, exoneration or hold harmless right will or could be sought under this Agreement. Notice to the Company shall be directed to the President or Chief Executive Officer of the Company at the address shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnitee). In addition, Indemnitee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnitee's power.

(c) No Presumptions; Burden of Proof. For purposes of this Agreement, the termination of any Claim by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of *nolo contendere*, or its equivalent, shall not create a

presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification, exoneration or hold harmless right is not permitted by this Agreement or applicable law. In addition, neither the failure of any Reviewing Party to have made a determination as to whether Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by any Reviewing Party that Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by Indemnitee to secure a judicial determination that Indemnitee should be indemnified, exonerated or held harmless under this Agreement or applicable law, shall be a defense to Indemnitee's claim or create a presumption that Indemnitee has not met any particular standard of conduct or did not have any particular belief. In connection with any determination by any Reviewing Party or otherwise as to whether the Indemnitee is entitled to be indemnified, exonerated or held harmless hereunder, the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

(d) Notice to Insurers. If, at the time of the receipt by the Company of a notice of a Claim pursuant to Section 4(b) hereof, the Company has liability insurance in effect which may cover such Claim, the Company shall give prompt notice of the commencement of such Claim to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Claim in accordance with the terms of such policies.

(e) Selection of Counsel. In the event the Company shall be obligated hereunder to provide indemnification, exoneration or hold harmless rights for or make any Expense Advances with respect to the Expenses of any Claim, the Company, if appropriate, shall be entitled to assume the defense of such Claim with counsel approved by Indemnitee (which approval shall not be unreasonably withheld) upon the delivery to Indemnitee of written notice of the Company's 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 or expenses of separate counsel subsequently employed by or on behalf of Indemnitee with respect to the same Claim; *provided, however*, that (i) Indemnitee shall have the right to employ Indemnitee's separate counsel in any such Claim at Indemnitee's expense and (ii) if (A) the employment of separate counsel by Indemnitee has been previously authorized by the Company, (B) Indemnitee shall have reasonably 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 continue to retain such counsel to defend such Claim, then the fees and expenses of Indemnitee's separate counsel shall be Expenses for which Indemnitee may receive indemnification, exoneration or hold harmless rights or Expense Advances hereunder. The Company shall have the right to conduct such defense as it sees fit in its sole discretion, including the right to settle any claim, action or proceeding against Indemnitee without the consent of Indemnitee, provided that the terms of such settlement include either: (i) a full release of Indemnitee by the claimant from all liabilities or potential liabilities under such claim; or (ii), in the event such full release is not obtained, the terms of such settlement do not limit any indemnification, exoneration or hold harmless right Indemnitee may now, or hereafter,

be entitled to under this Agreement, the Company's Certificate of Incorporation, bylaws, any agreement, any vote of stockholders or disinterested directors, the General Corporation Law of the State of Delaware (the "DGCL") or otherwise.

**5. Additional Indemnification Rights; Nonexclusivity**.

(a) Scope. The Company hereby agrees to indemnify, exonerate and hold harmless the Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification, exoneration or hold harmless right is not specifically authorized by the other provisions of this Agreement, the Company's Certificate of Incorporation, the Company's bylaws or by statute. In the event of any change after the date of this Agreement in any applicable law, statute or rule which expands the right of a Delaware corporation to indemnify, exonerate or hold harmless a member of its board of directors or an officer, employee, agent or fiduciary, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits afforded by such change. In the event of any change in any applicable law, statute or rule which narrows the right of a Delaware corporation to indemnify, exonerate or hold harmless a member of its board of directors or an officer, employee, agent or fiduciary, such change, to the extent not otherwise required by such law, statute or rule to be applied to this Agreement, shall have no effect on this Agreement or the parties' rights and obligations hereunder except as set forth in Section 10(a) hereof.

(b) Nonexclusivity. The indemnification, exoneration or hold harmless rights and the payment of Expense Advances provided by this Agreement shall be in addition to any rights to which Indemnitee may be entitled under the Company's Certificate of Incorporation, its bylaws, any other agreement, any vote of stockholders or disinterested directors, the DGCL, or otherwise. The indemnification, exoneration or hold harmless rights and the payment of Expense Advances provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified, exonerated or held harmless capacity even though subsequent thereto Indemnitee may have ceased to serve in such capacity.

**6. No Duplication of Payments.** The Company shall not be liable under this Agreement to make any payment in connection with any Claim made against Indemnitee to the extent Indemnitee has otherwise actually received payment (under any insurance policy, provision of the Company's Certificate of Incorporation, bylaws or otherwise) of the amounts otherwise payable hereunder.

**7. Partial Indemnification.** If Indemnitee is entitled under any provision of this Agreement to indemnification, exoneration or hold harmless rights by the Company for some or a portion of Expenses incurred in connection with any Claim, but not, however, for the total amount thereof, the Company shall nevertheless indemnify, exonerate or hold harmless Indemnitee for the portion of such Expenses to which Indemnitee is entitled.

**8. Mutual Acknowledgment.** Both the Company and Indemnitee acknowledge that in certain instances, federal law or applicable public policy may prohibit the Company from indemnifying, exonerating or holding harmless its directors, officers, employees, agents or





fiduciaries under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification, exoneration or hold harmless rights to a court in certain circumstances for a determination of the Company's right under public policy to indemnify, exonerate or hold harmless Indemnitee.

**9. Liability Insurance.** To the extent the Company maintains liability insurance applicable to directors, officers, employees, agents or fiduciaries, Indemnitee shall be covered by such policies in such a manner as to provide Indemnitee the same rights and benefits as are provided to the most favorably insured of the Company's directors, if Indemnitee is a director; or of the Company's officers, if Indemnitee is not a director of the Company but is an officer; or of the Company's key employees, agents or fiduciaries, if Indemnitee is not an officer or director but is a key employee, agent or fiduciary.

**10. Exceptions.** Notwithstanding any other provision of this Agreement, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) Excluded Action or Omissions. To indemnify, exonerate or hold harmless Indemnitee for Expenses resulting from acts, omissions or transactions for which Indemnitee is prohibited from receiving indemnification, exoneration or hold harmless rights under this Agreement or applicable law; *provided, however*, that notwithstanding any limitation set forth in this Section 10(a) regarding the Company's obligation to provide indemnification, exoneration or hold harmless rights to Indemnitee shall be entitled under Section 3 to receive Expense Advances hereunder with respect to any such Claim unless and until a court having jurisdiction over the Claim shall have made a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that Indemnitee has engaged in acts, omissions or transactions for which Indemnitee is prohibited from receiving indemnification under this Agreement or applicable law.

(b) Claims Initiated by Indemnitee. To indemnify, exonerate or hold harmless or make Expense Advances to Indemnitee with respect to Claims initiated or brought voluntarily by Indemnitee and not by way of defense, counterclaim or cross claim, except (i) with respect to actions or proceedings brought to establish or enforce an indemnification, exoneration or hold harmless right under this Agreement or any other agreement or insurance policy or under the Company's Certificate of Incorporation or bylaws now or hereafter in effect relating to Claims for Covered Events, (ii) in specific cases if the Board of Directors has approved the initiation or bringing of such Claim, or (iii) as otherwise required under Section 145 of the DGCL, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, exoneration, hold harmless right, Expense Advances or insurance recovery,

as the case may be.

(c) Lack of Good Faith. To indemnify, exonerate or hold harmless Indemnitee for any Expenses incurred by the Indemnitee with respect to any action instituted (i) by Indemnitee to enforce or interpret this Agreement, if a court having jurisdiction over such action determines as provided in Section 13 that each of the material assertions made by the

Indemnitee as a basis for such action was not made in good faith or was frivolous, or (ii) by or in the name of the Company to enforce or interpret this Agreement, if a court having jurisdiction over such action determines as provided in Section 13 that each of the material defenses asserted by Indemnitee in such action was made in bad faith or was frivolous.

(d) Claims Under Section 16(b). To indemnify, exonerate or hold harmless Indemnitee for expenses and the payment of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute; *provided, however,* that notwithstanding any limitation set forth in this Section 10(d) regarding the Company's obligation to provide indemnification or exoneration or hold harmless, Indemnitee shall be entitled under Section 3 to receive Expense Advances hereunder with respect to any such Claim unless and until a court having jurisdiction over the Claim shall have made a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that Indemnitee has violated said statute.

**11. Counterparts.** This Agreement may be executed in counterparts and by facsimile or electronic transmission, each of which shall constitute an original and all of which, together, shall constitute one instrument.

**12. Binding Effect; Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, spouses, heirs, and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all, or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as a director, officer, employee, agent or fiduciary (as applicable) of the Company or of any other enterprise at the Company's request.

**13. Expenses Incurred in Action Relating to Enforcement or Interpretation.** In the event that any action is instituted by Indemnitee under this Agreement or under any liability insurance policies maintained by the Company to enforce or interpret any of the terms hereof or thereof, Indemnitee shall be entitled to be indemnified for all Expenses incurred by Indemnitee with respect to such action (including without limitation attorneys' fees), regardless of whether Indemnitee is ultimately successful in such action, unless as a part of such action a court having jurisdiction over such action makes a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that each of the material assertions made by Indemnitee as a basis for such action was not made in good faith or was frivolous; *provided, however*, that until such final judicial determination is made, Indemnitee shall be entitled under Section 3 to receive payment of Expense Advances hereunder with respect to such action. In the

event of an action instituted by or in the name of the Company under this Agreement to enforce or interpret any of the terms of this Agreement, Indemnitee shall be entitled to be indemnified, exonerated or held harmless for all Expenses incurred by Indemnitee in defense of such action (including without limitation costs and expenses incurred with respect to Indemnitee's counterclaims and cross-claims made in such action), unless as a part of such action a court having jurisdiction over such action makes a final judicial determination (as to which all rights of appeal therefrom have been exhausted or lapsed) that each of the material defenses asserted by Indemnitee in such action was made in bad faith or was frivolous; *provided, however*, that until such final judicial determination is made, Indemnitee shall be entitled under Section 3 to receive payment of Expense Advances hereunder with respect to such action.

**14. Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and signed for by the party addressed, on the date of such delivery, or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice to either party are as shown on the signature page of this Agreement or as subsequently modified by written notice.

**15. Consent to Jurisdiction.** The Company and Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be commenced, prosecuted and continued only in the Court of Chancery of the State of Delaware in and for Kent County, which shall be the exclusive and only proper forum for adjudicating such a claim.

**16. Severability.** The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including without limitation each portion of this Agreement containing any provision held to be invalid, void or otherwise unenforceable, that is not itself invalid, void or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

**17. Choice of Law.** This Agreement, and all rights, remedies, liabilities, powers and duties of the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of laws.

**18. Subrogation.** In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee from any insurance policy purchase by the Company, who shall execute all documents required and shall do all acts that may be necessary to secure such rights and to enable the Company effectively to bring suit to enforce such rights. In no event, however, shall the Company or any

other person have any right of recovery, through subrogation or otherwise, against (i) Indemnitee or (ii) any insurance policy purchased or maintained by Indemnitee.

**19.** **Amendment and Termination.** No amendment, modification, termination or cancellation of this Agreement shall be effective unless it is in writing signed by both the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.

**20.** **Integration and Entire Agreement.** This Agreement sets forth the entire understanding between the parties hereto and supersedes and merges all previous written and oral negotiations, commitments, understandings and agreements relating to the subject matter hereof between the parties hereto.

**21.** **No Construction as Employment Agreement. Nothing contained in this Agreement shall be construed as giving Indemnitee any right to employment by the Company or any of its subsidiaries or affiliated entities.**

**22.** **Additional Acts**. If for the validation of any of the provisions in this Agreement any act, resolution, approval or other procedure is required, the Company undertakes to cause such act, resolution, approval or other procedure to be affected or adopted in a manner that will enable the Company to fulfill its obligations under this Agreement.

Initials: Interested Party _____
Accuray _____

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

**ACCURAY INCORPORATED**

By: _____

Name: Wayne Wu

Title: Chairman of the Board of Directors

Date: _____

Address: Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 94089
Attn: General Counsel

**AGREED TO AND ACCEPTED BY:**

**INDEMNITEE:**

By: _____

Name: _____

Date: _____

Address: _____

_____

_____

**Exhibit 10.22**

Initials: Contractor /s/ J.R.A.
Accuray /s/ D.M.

**INDEPENDENT CONTRACTOR AGREEMENT**

This Independent Contractor Agreement ("Agreement") is made effective as of April 1, 2009 by and between Accuray Incorporated, a Delaware corporation (the "Company"), and John Adler, M.D. ("Contractor" and, together with the Company, the "Parties"). The Company desires to retain Contractor as an independent contractor to perform certain services for the Company and Contractor is willing to perform such services, on terms set forth more fully below. In consideration of the mutual promises contained herein, the Parties agree as follows:

1. Services.

During the term of this agreement, Contractor will provide services (the " Services") to the Company as described on Exhibit A attached to this Agreement. Contractor shall use his best efforts to perform the Services to the satisfaction of the Company and by the completion dates specified by the Company. Contractor shall not perform any Services for the Company other than as specifically authorized in Exhibit A.

2. **Independent Contractor Status.**

It is the Parties' intent that Contractor at all times, and with respect to all Services covered by this Agreement function as and remain an independent contractor, and not an employee or officer of the Company, and neither Party shall represent to third parties that Contractor is an employee or officer of the Company.

(a) Contractor shall be responsible for the payment of all taxes on amounts received from the Company for the Services. The Company will regularly report amounts paid to Contractor by filing Form 1099-MISC with the Internal Revenue service, as required by law. No part of Contractor's fees will be subject to withholding by the Company for payment of any social security, federal, state or other employee payroll taxes. Contractor agrees to indemnify and hold the Company harmless from any liability for, or assessment of, any such taxes imposed on the Company by relevant taxing authorities.

(b) Contractor shall retain the right to perform services for others during the term of this Agreement.

(c) Contractor will determine the method, details, and means of performing the Services. The Company shall have no right to, and shall not control, the manner or determine the method of accomplishment of the Services, though it may define the Services to be performed. Such Services may be amended, from time-to-time, by the Parties by written agreement, signed by the Contractor and the Company.

(d) Contractor may, at Contractor's own expense, employ such assistants as the Contractor may deem necessary to perform the Services. The Company shall not control, direct or supervise the work of Contractor's assistants or employees in the performance of Services. The Contractor assumes full and sole responsibility for the quality of Services provided by the Contractor's assistants or employees, for the payment of all compensation and expenses of these assistants and employees, for state and federal income taxes and other applicable payroll taxes and withholding that may be required with respect to such assistants or employees, and for the provision of all benefits and insurance, including without limitation, Worker's Compensation Insurance, to such assistants or employees. Contractor shall furnish the Company with proof

of Worker's Compensation Insurance coverage for all persons who provide Services pursuant to this Agreement.

(e) Contractor shall be responsible for all expenses incurred in the execution of Contractor's responsibilities pursuant to this Agreement, including, without limitation, all travel (including airfare and lodging), entertainment and dining expenses. No fines, taxes, bonds or fees imposed against Contractor, or costs of Contractor doing business, shall be reimbursable by the Company.

(f) Contractor shall not be eligible to participate in any fringe benefit program or any benefit plan of the Company.

(g) Contractor will have no authority to enter into contracts that bind the Company or to create obligations on the part of the Company without the prior written authorization of the Company.

(h) Contractor shall receive no office or administrative support from Company.

(i) Contractor will, in the performance of his duties hereunder, comply with all policies and procedures of the Company that are applicable to independent contractors and consultants, including but not limited to the Company's Code of Conduct and Ethics and the Company's Code of Conduct for Interaction with Healthcare Professionals.

3. Fees.

As consideration for the Services to be provided by Contractor, the Company will compensate Contractor as described in Exhibit B to this Agreement. Company will pay Contractor Contractor's annual compensation in quarterly installments of $42,025, such quarterly installments to be paid in advance of each quarter beginning on the date on which this Agreement is signed by both Parties and thereafter on the first business day of each quarter. Compensation for Contractor's Services shall be conditioned on the actual performance by Contractor of Services and the Company's receipt and approval of accurate and detailed quarterly invoices, including records of time spent and Services performed, from Contractor in the form attached hereto as Exhibit D. Contractor shall submit such quarterly invoices for all Services performed by Contractor during the applicable quarter two (2) weeks prior to the end of such quarter (for example, for the first quarterly period of this Agreement, April 1, 2009 to June 30, 2009, Contractor's first quarterly invoice will be due to Company no later than June 15, 2009). If for any quarter, Contractor has not provided the level of Services required to earn the full quarterly installment for such quarter, then the quarterly installment for Contractor for the following quarter will be reduced in an amount equal to the amount that Contractor was overcompensated for the preceding quarter. If at the end of the term of this Agreement, Contractor has never performed certain services, and Contractor's failure to perform such services has not been offset against any subsequent quarter's installment, then Contractor will reimburse Company the corresponding amount for the services not performed within thirty (30) calendar days. The Parties acknowledge that payment for the Services provided hereunder is consistent with the fair market value of such Services and is not conditioned in any way on the volume or value of any business (i) between the Company and any other party, or (ii) resulting, directly or indirectly, from any of Contractor's activities hereunder.

**4. Confidentiality.**

(a) **Confidential Information**. "Confidential Information" means Company proprietary information, technical data, trade secrets or know-how, including, but not limited to, research, product plans, product specifications, services, customers, customer lists, pipeline documents, marketing plans and strategies, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, circuit board designs, logic designs for filters and/or circuit boards, Company financials or other business information disclosed by the Company either directly or indirectly in writing, orally, or by drawings or inspection of parts or equipment. Confidential Information also includes any other information designated by the Company as such upon its disclosure to the Contractor.

(b) **Disclosure**. Contractor will not, during or subsequent to the term of this Agreement, use the Company's Confidential Information for any purpose whatsoever other than the performance of the Services on behalf of the Company. Contractor will not disclose the Company's Confidential Information to any third party, and understands that said Confidential Information shall remain the sole property of the Company. Contractor further agrees to take all reasonable precautions to prevent any unauthorized disclosure of such Confidential Information including, but not limited to, having each employee of Contractor, if any, with access to any Confidential Information, execute a nondisclosure agreement containing provisions in the Company's favor substantially similar to Sections 4, 5 and 6 of this Agreement. Confidential Information does not include information which, upon disclosure to Contractor is part of the public domain; can be established by written evidence to have been in the possession of Contractor at the time of disclosure; is received by Contractor from a third party without restriction and without breach of this Agreement; or has become publicly known and made generally available through no wrongful act of Contractor. If Contractor is required to disclose Confidential Information by lawfully issued subpoena or by an authorized order of a government agency, Contractor will immediately so inform the Company, and will use best efforts to minimize the disclosure of such Confidential Information and will consult with and assist the Company in seeking a protective order prior to such disclosure.

(c) **Indemnity**. Contractor agrees that Contractor will not, during the term of this Agreement, improperly use or disclose to the Company or any of its employees any proprietary information or trade secrets of any former or current employer or other person or entity with which Contractor has an agreement, or to which Contractor has a duty, to keep in confidence information acquired by Contractor, and that Contractor will not bring onto the premises of the Company any unpublished document, proprietary information, or trade secret belonging to such employer, person or entity unless consented to in writing by such employer, person or entity. Contractor will indemnify the Company and hold it harmless from and against all claims, liabilities, damages and expenses, including reasonable attorneys' fees and costs of suit, arising out of or in connection with any violation or claimed violation of a third party's rights resulting in whole or in part from the Services provided by Contractor under this Agreement.

(d) **Third Parties**. Contractor recognizes that the Company has received and in the future will receive from third parties their confidential or proprietary information or trade secrets subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. Contractor agrees that Contractor owes the Company and such third parties, during the term of this Agreement and thereafter, a duty to hold all such confidential or proprietary information or trade secrets in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out the Services for the Company consistent with the Company's agreement with such third party.

(e) **Return of Confidential Information**. Upon the termination of this Agreement, or upon the Company's earlier request, Contractor will deliver to the Company all of the Company's property and all Confidential Information in tangible form that Contractor may have in Contractor's possession or control.

**5. Ownership.**

(a) **Inventions**. Contractor agrees that all copyrightable material, notes, records, drawings, designs, inventions, improvements, developments, discoveries and trade secrets (collectively, "Inventions") conceived, made or discovered by Contractor, solely or in collaboration with others, during the period of this Agreement which relate in any manner to the business of the Company that Contractor may be directed to undertake, investigate or experiment with, or which Contractor may become associated with as a result of work, investigation or experimentation in the line of business of Company in performing the Services hereunder (which Company and Contractor agree are related to Sales and Marketing), are the sole property of the Company. Contractor further agrees to assign (or cause to be assigned) and does hereby assign fully to the Company all such Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto.

(b) **Assistance**. Contractor agrees to assist Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. Contractor further agrees that Contractor's obligation to execute or cause to be executed, when it is in Contractor's power to do so, any such instrument or papers shall continue after the termination of this Agreement.

(c) **License**. Contractor agrees that if in the course of performing the Services (which Company and Contractor acknowledge are related to Sales and Marketing), Contractor incorporates into any Invention developed hereunder any invention, improvement, development, concept, discovery or other proprietary information owned by Contractor or in which Contractor has an interest, the Company is hereby granted and shall have a nonexclusive, royalty-free, perpetual, irrevocable, worldwide license to make, have made, modify, use and sell such item as part of or in connection with such Invention.

(d) **Agent**. Contractor agrees that if the Company is unable because of Contractor's unavailability for any reason to secure Contractor's signature to apply for or to pursue any application for any United States or foreign patents or mask work or copyright registrations covering the Inventions assigned to the Company above, then Contractor hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Contractor's agent and attorney-in-fact, to act for and in Contractor's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations thereon with the same legal force and effect as if executed by Contractor.

6. Originality and Noninfringement.

Contractor represents and warrants that all materials and Services provided hereunder will be original with Contractor and that the use thereof by the Company or its customers, representatives, distributors or dealers will not infringe any patent, copyright, trade secret or other intellectual property right of any third party. Contractor agrees to indemnify and hold the Company harmless against any liability, loss, cost, damage, claims, demands or expenses (including reasonable attorneys' fees) of the Company or its customers, representatives, distributors or dealers arising out of any infringement or claim of infringement with respect to any materials or Services provided by Contractor.

7. Reports.

Contractor agrees that Contractor will, from time-to-time during the term of this Agreement, keep the Company informed as to Contractor's progress in performing the Services hereunder and that Contractor will, as requested by the Company, prepare written reports with respect thereto. The Parties understand that the time required in the preparation of such written reports shall be considered time devoted to the performance of Contractor's Services.

**8. Conflicting Obligations.**

(a) **Performance**. Contractor acknowledges that Contractor will be available to perform the Services in a timely and responsible manner, except for the occasional circumstance in which a pre-existing clinical responsibility on the part of Contractor may conflict with a new commitment requested by the Company, subject to the requirements of the schedule of Services arranged by Company and Contractor pursuant to Section 1 of Exhibit A hereto. Failure to perform in a timely and responsible manner shall be a breach of this Agreement.

(b) **No Conflicts**. Contractor represents and warrants that Contractor has no outstanding agreement or obligation that is in conflict with any provision of this Agreement, or that would preclude Contractor from complying with the provisions hereof, except as disclosed in Exhibit C hereto. Contractor further represents and warrants that Contractor will not enter into any such conflicting Agreement during the term of this Agreement.

9. Term and Termination.

(a) **Commencement**. This Agreement will commence on the date first above written and will continue for a period of one year (the "Initial Term"). Unless 30 days' written notice of termination is given by either Party prior to the expiration of the Initial Term, or any subsequent Term, this Agreement shall renew for successive one-year periods.

(b) **Termination**. This Agreement may be terminated as follows:

(i) Either Party may terminate this Agreement with 90 days' prior written notice to the other. Any such notice shall be addressed to such Party at the address shown below or such other address as such Party shall provide to the other, and shall be deemed given upon delivery if personally delivered, on the next business day if sent via overnight courier, or three days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested.

(ii) The Parties shall attempt to amend this Agreement upon receipt of any Governmental Action in order to comply with such Governmental Action. If the Parties, acting in good faith, are unable to make the amendments necessary to comply with such Governmental Action, or, alternatively, if either Party determines in good faith that compliance with the Governmental Action is impossible or infeasible, this Agreement shall terminate 10 days after one Party notifies the other of such fact. For purposes of this Section 9(b)(ii), the term "Governmental Action" shall mean any legislation, regulation, rule or procedure passed, adopted or implemented by any federal, state or local government or legislative body or any private agency, or any notice of a decision, finding, interpretation or action by any governmental or private agency, court or other third party which, in the opinion of counsel to the Company, because of the arrangement between the Parties pursuant to this Agreement, if or when implemented, would: (A) constitute a violation of any federal, state or local law; or (B) subject either Party, or any of their respective employees or agents, to civil or criminal liability or prosecution on the basis of their participation in executing this Agreement or performing their respective obligations under this Agreement.

(iii) If this Agreement is terminated for any reason within one-year of the date first above written, the Parties shall not enter into the same or substantially the same arrangement contemplated by this Agreement during the period which is one (1) year following the date first above written.

(c) **Survival**. Upon such termination, all rights and duties of the Parties toward each other shall cease except:

(i) that the Company shall be obliged to pay, within 30 days of receipt of the Contractor's invoice, all amounts owing to Contractor for unpaid Services through the termination date; and

(ii) Sections 4, 5, 6, 9 and 11 shall survive termination of this Agreement.

10. **Assignment.** Neither this Agreement nor any right hereunder nor interest herein may be assigned or transferred by the Company or the Contractor without the written consent of the other.

**11. Arbitration and Equitable Relief.**

(a) **Arbitration**. Except as provided in Section 11(b) below, the Company and Contractor agree that any dispute or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement shall be settled by arbitration to be held in Santa Clara County, California before a single, neutral arbitrator associated with the Judicial Arbitration and Mediation Service ("JAMS"). The arbitrator shall be selected by the Parties or, if the Parties are unable to agree, by JAMS, in accordance with its selection practices. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive, and binding on the Parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. Unless otherwise required to preserve the enforceability of this arbitration clause, the Company and Contractor shall each pay one-half of the costs and expenses of such arbitration.

(b) **Equitable Relief**. Contractor agrees that it would be impossible or inadequate to measure and calculate the Company's damages from any breach of the covenants set forth in Section 4 or 5 herein. Accordingly, Contractor agrees that if Contractor breaches Sections 4 or 5, the Company will have

available, in addition to any other right or remedy available, the right to obtain from any court of competent jurisdiction an injunction restraining such breach or threatened breach and specific performance of any such provision. Contractor further agrees that no bond or other security shall be required in obtaining such equitable relief and Contractor hereby consents to the issuances of such injunction and to the ordering of such specific performance.

**12. Miscellaneous.**

(a) **Amendments and Waivers**. Any term of this Agreement may be amended or waived only with the written consent of the Parties.

(b) **Entire Agreement**. This Agreement, including the Exhibits hereto, constitutes the entire agreement of the Parties and supersedes and replaces all oral negotiations and prior writings with respect to the subject matter hereof.

(c) **Notices**. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt, when delivered personally or by courier or overnight delivery service, or three days after being deposited in the regular United States mail as certified or registered mail (airmail if sent internationally) with postage prepaid, if such notice is addressed to the party to be notified at such party's address or facsimile number as set forth below, or as subsequently modified by written notice.

(d) **Governing Law**. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California, without giving effect to its principles of conflict of laws.

(e) **Legal Fees**. If any dispute arises between the Parties with respect to matters covered by this Agreement which leads to a proceeding, pursuant to Section 11, to resolve such dispute, the prevailing party in any such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which it may be entitled.

(f) **Severability**. If one or more provisions of this Agreement are held to be unenforceable under applicable law, then such unenforceable provision shall be deemed modified so as to be enforceable (or if not subject to modification then eliminated herefrom) for the purpose of those procedures to the extent necessary to permit the remaining provisions to be enforced.

(g) **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

(h) **Advice of Counsel**. EACH PARTY ACKNOWLEDGES THAT, IN EXECUTING THIS AGREEMENT, SUCH PARTY HAS HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT LEGAL COUNSEL, AND HAS READ AND UNDERSTOOD ALL OF THE TERMS AND PROVISIONS OF THIS AGREEMENT. THIS AGREEMENT SHALL NOT BE CONSTRUED AGAINST ANY PARTY BY REASON OF THE DRAFTING OR PREPARATION HEREOF.

(i) **Compliance with Laws.** The Parties agree to abide by the Company's compliance policies and all federal, state or local laws, regulations, ordinances or other legal requirements in connection

with the performance of the Services hereunder. In addition, at all times during this Agreement, Contractor shall have in effect all licenses, permits and authorizations for all local, state, federal and foreign governmental agencies to the extent the same are necessary to the performance of the Services hereunder and will verify all such licenses, permits and authorizations are in place before performing any Services under this Agreement. Consultant shall not perform any Services under this Agreement for which he does not hold all necessary licenses, permits and authorizations and will hold the Company harmless in all respects for any claims or actions resulting from Contractor's violation of this provision.

**[SIGNATURE PAGE FOLLOWS]**





IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

**JOHN ADLER, M.D.**

Name: John Adler, M.D.

Title: Contractor

Address: 894 Tolman Drive
Stanford, CA 94305

Telephone: (650) 852.9626

Signature: /s/ John Adler, M.D.

Date: 3/3/09

**ACCURAY, INC.**

Name: Wade Hampton

Title: SVP, Chief Sales Officer

Address: 1310 Chesapeake Terrace
Sunnyvale, CA 94089

Telephone: 1.408.789.4239

Signature: /s/ Wade Hampton

Date: 3/14/09

Name: Darren Milliken

Title: Interim General Counsel

Address: 1310 Chesapeake Terrace
Sunnyvale, CA 94089

Telephone: 1.408.716.4648

Signature: /s/ Darren Milliken

Date: 3-5-09

Initials: Contractor /s/ J.R.A.
Accuray /s/ D.M.

EXHIBIT A

**SERVICES**

1. **Description of Services**.

Contractor will be present at and participate in VIP visits arranged by Company at Stanford University Medical Center ("SUMC"). In addition, Contractor will travel to and participate in both domestic and international sales visits as requested by Company. Finally, Contractor will travel to and participate in certain domestic tradeshows or symposiums which Company requests that Contractor attend. As soon as practicable following the execution of this Agreement, Contractor and the Company shall meet to schedule the specific Services to be performed during the first calendar quarter that this Agreement is in effect. Thereafter, Contractor and the Company shall meet at least thirty (30) days in advance of the end of each calendar quarter to schedule the Services to be performed during the subsequent calendar quarter.

2. **VIP Visits.**

Contractor's duties and deliverables in connection with Contractor's participation in Company's VIP visits at Accuray (up to two (2) visits per month with a maximum of nine (9) visits per year) will include:

2.1. Question and Answer Sessions: Contractor will participate in a thirty (30) minute "Question and Answer" session during the VIP visit at Accuray.

2.2. Lunches/Dinners: Contractor will attend a lunch or dinner meeting, as applicable, following the VIP visit.

3. **Sales Visits/Tradeshows/Symposiums.**

Contractor's duties and deliverables in connection with Contractor's travel to and participation in sales visits and tradeshows will include:

3.1. Domestic Sales Visits/Tradeshows/Symposiums: Contractor will travel to and attend domestic sales visits, tradeshows, and symposiums as requested by Company, up to three (3) trips per year collectively requiring a total of no more than four (4) days.

3.2. Mexican and Canadian Sales Visits: One (1) trip per year to Canada or Mexico lasting for two (2) full days with customer.

3.3. International Sales Visits (outside of North America): Contractor will travel to and attend Sales Visits in Europe and other international markets (for example: India, Asia, South America, and/or other emerging markets) as requested by Company. At Company's option, these sales visits shall consist of approximately five (5) international trips collectively requiring a total of no more than exactly twenty five (25) days.

3.4. Notice: To the extent possible, Company shall use commercially reasonable efforts to provide Contractor with at least three (3) weeks prior notice of any travel required in connection with sales visits and attendance at trade shows and symposiums.

Initials: Contractor /s/ J.R.A.
Accuray /s/ D.M.

EXHIBIT B

**COMPENSATION**

1. **Compensation.** Contractor shall be compensated for Services performed according to this Agreement as follows:

1.1. Compensation for VIP Visits and Webcast support:

| | | |
|---|---|---|
| 1.1.1. | Q & A Session: | $650 per Q&A session |
| 1.1.2. | Lunch or Dinner: | $650 per Lunch or Dinner |
| 1.1.3. | Maximum Compensation per Visit: | $1,300 per Visit |
| 1.1.4. | Webcast with Q&A | $650 per session |
| 1.1.5. | **Maximum Annual Compensation:** | **$15,600 per year** |
| 1.1.6. | Maximum annual compensation for VIP Visits is based on nine (9) VIP visits (Q&A session with Lunch/Dinner) and six (6) webcasts per year. | |

1.2. Compensation for Attending Domestic Sales/Tradeshow/Symposium Visits:

| | | |
|---|---|---|
| 1.2.1. | Domestic Sales/Tradeshow/Symposium: | $4,800 per day |
| 1.2.2. | **Maximum Annual Compensation:** | **$19,200 per year** |
| 1.2.3. | Maximum annual compensation for domestic sales visits, tradeshows, and symposiums is based on three (3) trips per year collectively requiring a total of no more than four (4) days. | |

1.3. Compensation for Mexico and Canada Visits:

| | | |
|---|---|---|
| 1.3.1. | Sales Visit in Mexico/Canada: | $4,800 per day |
| 1.3.2. | **Maximum Annual Compensation:** | **$9,600 per year** |
| 1.3.3. | Maximum annual compensation for Sales Visits in either Mexico or Canada is based on one (1) trip per year collectively requiring a total of no more than two (2) days. | |

1.4. Compensation for Attending International (outside of N. America) Sales Visits:

| | | |
|---|---|---|
| 1.4.1. | International Sales Visits: | $4,948 per day |
| 1.4.2. | **Maximum Annual Compensation:** | **$123,700 per year** |
| 1.4.3. | Maximum annual compensation for International Sales Visits is based on approximately five (5) trips per year collectively requiring a total of no more than exactly twenty five (25) days. | |

1.5. Notwithstanding the forgoing, in the event Company requests that Contractor travel to and attend an International Sales Visit/Tradeshow/Symposium (including Mexico and Canada) without at least 30 days prior notice, then Company shall pay contractor an additional $1,000 in addition to the applicable compensation to cover last minute costs.

2. **Payment.** Contractor's maximum possible annual compensation from Company under this Agreement is $168,100 to be paid quarterly in advance, in four (4) equal installments of $42,025 per quarter beginning on the day that this Agreement is signed by both Parties and thereafter on the first business day of each quarter. Should Contractor not perform certain of the above objectives, then future quarterly payments to Contractor may be offset by the corresponding amount of the Services not performed. If at the end of the term of this Agreement, certain Services were not performed, and Contractor's failure to perform such services has not been offset against any subsequent quarter's installment, then Contractor shall reimburse Company for the corresponding amount of the services not performed within thirty (30) calendar days.

EXHIBIT C

**LIST OF POTENTIAL CONFLICTS**

Cyberknife Society

Initials: Contractor /s/ J.R.A.
Accuray /s/ D.M.

EXHIBIT D

**CONTRACTOR TIME RECORD**

**Contractor:**

| Date | Description of Services Performed | Locations of Services Performed | Number of Days/Visits |
|---|---|---|---|
| | | | |
| | | | |

This record is a complete and accurate description of the Services I performed and the time spent in connection therewith on behalf of Accuray Incorporated on the dates specified above.

**Contractor** **Date**

**Exhibit 10.30**

May 14, 2009

Darren J. Milliken
12989 Del Valle Court
Los Altos Hills, CA 94022

**Re: EMPLOYMENT TERMS**

Dear Darren,

Accuray Incorporated (the "**Company**") is pleased to extend this offer of employment as the **Senior Vice President, General Counsel and Corporate Secretary** on the terms and conditions set forth in this letter (the "**Agreement**"), effective as of May 6, 2009 (the "**Effective Date**").

1. **TERM**. The employment relationship between you and the Company will be at-will. You and the Company will have the right to terminate the employment relationship at any time and for any reason whatsoever, with or without cause, and without any liability or obligation except as may be expressly provided herein.

   The term of this agreement (the "**Term**") shall be two (2) years, measured from the Effective Date. Upon the expiration of this Agreement the provisions contained herein, with the exception of Change of Control provisions, shall have no further force or effect and your employment, if extended at the sole discretion of the Company, will continue to be at-will and any terms associated with such employment shall be embodied in a written employment agreement signed by both parties.

   The term of the Change of Control provisions provided for in this Agreement (the " **Change of Control Term**") shall be three (3) years, measured from the Effective Date; however should the Company and employee enter into a new agreement after the Term expires the Change of Control provisions shall also automatically terminate and be superseded by the terms in such new agreement.

2. **POSITION, DUTIES AND RESPONSIBILITIES** . During the Term of this Agreement, the Company will employ you, and you agree to be employed by the Company, as the Senior Vice President, General Counsel and Corporate Compliance Officer. In this capacity you will have such duties and responsibilities as are normally associated with such position and will devote your full business time and attention to serving the Company in such position. Your duties may be changed from time to time by the Company, consistent with your position. You will report to the Chief Executive Officer of the Company, and will work full-time at our principal offices located at 1310 Chesapeake Terrace, Sunnyvale, California 94089 (or any other location the Company may utilize as its principal offices), except for travel to other locations as may be necessary to fulfill your responsibilities.

3. **BASE COMPENSATION**. During the Term, the Company will pay you a base salary of two hundred thirty five thousand dollars ($235,000) per year, less payroll deductions and all required withholdings, payable in accordance with the Company's normal payroll practices and prorated for any partial month of employment. Your base salary may be subject to increase pursuant to the Company's policies as in effect from time to time.

4. **ANNUAL BONUS**. In addition to the base salary set forth above, during the Term, you will be eligible to participate in the Company's executive bonus plan applicable to similarly situated executives of the Company. The amount of your annual bonus will be based on the attainment of performance criteria established and evaluated by the Company in accordance with the terms of such bonus plan as in effect from time to time, provided that, subject to the terms of such bonus plan, your target (but not necessarily maximum) annual bonus shall be fifty percent (50%) of your base salary actually paid for such year.

In accordance with the terms of such bonus plan, payment of each bonus shall be made in a single lump-sum cash payment not later than the last day of the applicable two and one-half (2 ½) month short-term deferral period with respect to such bonus payment, within the meaning of Treasury Regulation Section 1.409A-1(b)(4).

5. **STOCK OPTIONS.** As an added incentive, we will recommend to the Compensation Committee of the Board of Directors that you be granted an option (the "**Option**") to purchase twenty-five thousand (**25,000**) shares of Accuray common stock at a per share exercise price equal to the fair market value of a share of our common stock on the date of the grant, as determined in accordance with the Accuray Incorporated 2007 Incentive Award Plan (the "**Incentive Plan**"). The grant of the Option is subject to and conditioned on approval of the grant and its terms by the Compensation Committee, and will be made as soon as practicable following the Effective Date. Subject to your continued employment with the Company, the Option shall vest and become exercisable over a four (4) year period, with 1/48th of the shares subject thereto vesting in equal monthly installments on each monthly anniversary of the date of grant. The Option will be subject to the terms and conditions of the Incentive Plan and a stock option agreement in a form prescribed by Accuray, which you will be required to sign as a condition to receiving the Option (the "**Option Agreement**").

6. **BENEFITS AND PAID TIME OFF**. During the Term, you will be eligible to participate in all incentive, savings and retirement plans, practices, policies and programs maintained or sponsored by the Company from time to time which are applicable to other similarly situated executives of the Company, subject to the terms and conditions thereof. During the Term, you will also be eligible for standard benefits, such as medical, vision and dental insurance, paid time off, and holidays to the extent applicable generally to other similarly situated executives of the Company, subject to the terms and conditions of the applicable Company plans or policies. The benefits described in this Section 6 will be subject to change from time to time as deemed appropriate and necessary by the Company.

**7. TERMINATION OF EMPLOYMENT.**

(a) If prior to the termination of this Agreement, you incur a "separation from service" (within the meaning of Section 409A(a)(2)(A)(i) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and Treasury Regulation Section 1.409A-1(h)) ("**Separation from Service**") by reason of (i) a termination of your employment by the Company other than for Cause (as defined below), death or disability, or (ii) a termination of your employment by you for Good Reason (as defined below), and provided that you execute a general release of claims in a form

prescribed by the Company (the "**Release**") within twenty-one (21) days (or, if required by applicable law, forty-five (45) days) after the date of such Separation from Service (the "**Separation Date**") and you do not revoke such Release, and further subject to Section 16(b) below, then, in addition to any other accrued amounts payable to you through the Separation Date (including any earned but unpaid bonus), (1) the Company will, no later than thirty (30) days after the Separation Date, pay you a lump-sum severance payment (the " **Severance Payment**") in an amount equal to six (6) months of your annual base salary as in effect immediately prior to the Separation Date, additionally provided that you properly elect COBRA continuation coverage, the Company will pay the COBRA premium for health care coverage for you and your partner and children, as applicable and to the extent eligible (the "**Severance Benefits**"), for the six (6) month period immediately following the Separation Date, but in no event longer than the period of time during which you would be entitled to continuation coverage under Section 4980B of the Code absent this provision. The Company will also provide you with outplacement assistance in accordance with its then current policies and practices with respect to outplacement assistance for other similarly situated executives of the Company.

(b) If a Change in Control (as defined in Exhibit A hereto) occurs during the Change of Control Term and, within the twelve (12) month period immediately following the effective date of the Change in Control, you incur a Separation from Service by reason of (i) a termination of your employment by the Company other than for Cause, death or disability, or (ii) a termination of your employment by you for Good Reason, then, subject to Section 16(b) below, and provided that you execute a general release of claims in a form prescribed by the Company (the " **Release**") within twenty-one (21) days (or, if required by applicable law, forty-five (45) days) after the date of such Separation from Service (the "**Separation Date**") and you do not revoke such Release, and further subject to Section 16(b) below, then, in addition to any other accrued amounts payable to you through the Separation Date (including any earned but unpaid bonus), (1) the Company will, no later than thirty (30) days after the Separation Date, pay you a lump-sum severance payment (the " **Severance Payment**") in an amount equal to the sum of (x) twenty-four (24) months of your annual base salary as in effect immediately prior to the Separation Date plus (y) 100% of your target annual bonus for the fiscal year of the Company in which such Separation from Service occurs, and (2) provided that you properly elect COBRA continuation coverage, the Company will pay the COBRA premium for health care coverage for you and your spouse and children, as applicable and to the extent eligible (the "**Severance Benefits**"), for the twenty-four (24) month period immediately following the Separation Date, but in no event longer than the period of time during which you would be entitled to continuation coverage under Section 4980B of the Code absent this provision. In addition to the amounts payable to you pursuant to this paragraph (b) of this Section 7, each of your then outstanding options to purchase shares of the Company's common stock shall become fully vested and exercisable immediately prior to the Separation Date. The Company will also provide you with outplacement assistance in accordance with its then current policies and practices with respect to outplacement assistance for other similarly situated executives of the Company. For clarity, under Change of Control this paragraph (b) shall be in lieu of any similar payments or benefits described above in paragraph (a) of this Section 7.

(c) Notwithstanding the foregoing, your right to receive the payments and benefits set forth in this Section 7 is conditioned on and subject to your execution and non-revocation of the Release. In no event shall you or your estate or beneficiaries be entitled to any of the payments or benefits set forth in this Section 7 upon any termination of your employment by reason of your total and permanent disability or your death.

(d) For purposes of this letter:

i) "**Cause**" shall mean (i) your commission of a felony, (ii) your commission of a crime involving moral turpitude or your commission of any other act or omission involving dishonesty, disloyalty, breach of fiduciary duty or fraud with respect to the Company or any of its subsidiaries or any of their customers or suppliers, or (iii) your failure to perform the normal and customary duties of your position with the Company as reasonably directed by the Company, provided, that any of the acts or omissions described in the foregoing clauses (i), (ii) or (iii) are not cured to the Company's reasonable satisfaction within thirty (30) days after written notice thereof is given to you; and

ii) "**Good Reason**" shall mean the occurrence of any one or more of the following events without your prior written consent: (i) a material diminution by the Company of your duties and responsibilities hereunder; (ii) a material change in the geographic location at which you must perform services under this letter, provided that in no event will a change to a location within a 35 mile radius of the Company's Sunnyvale corporate headquarters be deemed material for purposes of this clause; or (iii) a material diminution by the Company of your annual base salary, each as in effect on the date hereof or as the same may be increased from time to time; provided, however, that a termination of your employment by you shall only constitute a termination for "Good Reason" hereunder if (a) you provide the Company with written notice setting forth the specific facts or circumstances constituting Good Reason within thirty (30) days after the initial existence of such facts or circumstances, (b) the Company has failed to cure such facts or circumstances within thirty (30) days after receipt of such written notice, and (c) the Separation Date occurs no later than seventy-five (75) days after the initial occurrence of the event constituting Good Reason.

8. **CODE SECTION 280G**.

(a) In the event it shall be determined that any payment or distribution to you or for your benefit which is in the nature of compensation and is contingent on a change in the ownership or effective control of the Company or the ownership of a substantial portion of the assets of the Company (within the meaning of Section 280G(b)(2) of the Code), whether paid or payable pursuant to this letter or otherwise (a " **Payment**"), would constitute a "parachute payment" under Section 280G(b)(2) of the Code and would be subject to the excise tax imposed by Section 4999 of the Code (together with any interest or penalties imposed with respect to such excise tax, the " **Excise Tax**"), then the Payments shall be reduced to the extent necessary so that no portion thereof shall be subject to the excise tax imposed by Section 4999 of the Code but only if, by reason of such reduction, the net after-tax benefit received by you shall exceed the net after-tax benefit received by you if no such reduction was made. The specific Payments that shall be reduced and the order of such reduction shall be determined so as to achieve the most favorable economic benefit to you, and to the extent economically equivalent, the Payments shall be reduced pro rata, all as determined by the Company in its sole discretion. For purposes of this Section 8(a), "net after-tax benefit" shall mean (i) the Payments which you receive or are then entitled to receive from the Company that would constitute "parachute payments" within the meaning of Section 280G of the Code, less (ii) the amount of all federal, state and local income taxes payable with respect to the Payments calculated at the maximum marginal income tax rate for each year in which the Payments shall be paid to you (based on the rate in effect for such year as set forth in the Code as in effect at the time of the first payment of the foregoing), less (iii) the amount of Excise Taxes imposed with respect to the Payments.

(b) All determinations required to be made under this Section 8 shall be made by such nationally recognized accounting firm as may be selected by the Audit Committee of the Board of Directors of the Company as constituted immediately prior to the change in control transaction (the "**Accounting Firm**"), provided, that the Accounting Firm's determination shall be made based upon "substantial authority" within the meaning of Section 6662 of the Code. The Accounting Firm shall provide its determination, together with detailed supporting calculations and documentation, to you and the Company within 15 business days following the date of termination of your employment, if applicable, or such other time as requested by you (provided that you reasonably believe that any of the Payments may be subject to the Excise Tax) or the Company. All fees and expenses of the Accounting Firm shall be borne solely by the Company.

9. **RESTRICTIVE COVENANTS**.

(a) As a condition of your employment with the Company, you agree that during the Term and thereafter, you will not directly or indirectly disclose or appropriate to your own use, or the use of any third party, any trade secret or confidential information concerning the Company or its subsidiaries or affiliates (collectively, the "**Company Group**") or their businesses, whether or not developed by you, except as it is required in connection with your services rendered for the Company. You further agree that, upon termination of your employment, you will not receive or remove from the files or offices of the Company Group any originals or copies of documents or other materials maintained in the ordinary course of business of the Company Group, and that you will return any such documents or materials otherwise in your possession. You further agree that, upon termination of your employment, you will maintain in strict confidence the projects in which any member of the Company Group is involved or contemplating.

(b) You further agree that during the Term and continuing through the first anniversary of the date of termination of your employment, you will not directly or indirectly solicit, induce, or encourage any employee, consultant, agent, customer, vendor, or other parties doing business with any member of the Company Group to terminate their employment, agency, or other relationship with the Company Group or such member or to render services for or transfer their business from the Company Group or such member and you will not initiate discussion with any such person for any such purpose or authorize or knowingly cooperate with the taking of any such actions by any other individual or entity.

(c) While employed by the Company, you agree that you will not engage in any business activity in competition with any member of the Company Group nor make preparations to do so.

(d) Upon the termination of your relationship with the Company, you agree that you will promptly return to the Company, and will not take with you or use, all items of any nature that belong to the Company, and all materials (in any form, format, or medium) containing or relating to the Company's business.

(e) In recognition of the facts that irreparable injury will result to the Company in the event of a breach by you of your obligations under Sections 9(a), (b), (c) or (d) above, that monetary damages for such breach would not be readily calculable, and that the Company would not have an adequate remedy at law therefore, you acknowledge, consent and agree that in the event of such breach, or the threat thereof, the Company shall be entitled, in addition to any other legal remedies and damages available, to specific performance thereof and to temporary

and permanent injunctive relief (without the necessity of posting a bond) to restrain the violation or threatened violation of such obligations by you.

10. **COMPANY RULES AND REGULATIONS**. As an employee of the Company, you agree to abide by Company policies, procedures, rules and regulations as set forth in the Company's Employee Handbook, Code of Conduct and Ethics, or as otherwise promulgated. In addition, as a condition of your employment, you will be required to complete, sign, return, and abide by the Employee Confidentiality and Inventions Agreement.

11. **WITHHOLDING**. The Company may withhold from any amounts payable under this letter such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

12. **ARBITRATION**. Except as set forth in Section 9(e) above, any disagreement, dispute, controversy or claim arising out of or relating to this letter or the interpretation of this letter or any arrangements relating to this letter or contemplated in this letter or the breach, termination or invalidity thereof shall be settled by final and binding arbitration administered by JAMS/Endispute in Santa Clara County, California in accordance with the then existing JAMS/Endispute Arbitration Rules and Procedures for Employment Disputes. Except as provided herein, the Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state of California, or federal law, or both, as applicable, and the arbitrator is without jurisdiction to apply any different substantive law. The arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure. Judgment upon the award may be entered in any court having jurisdiction thereof. Each party shall pay his or its own attorneys' fees and expenses associated with such arbitration to the extent permitted by applicable law.

13. **ENTIRE AGREEMENT**. As of the Effective Date, this letter constitutes the final, complete and exclusive agreement between you and the Company with respect to the subject matter hereof and replaces and supersedes any and all other agreements, offers or promises, whether oral or written, made to you by any member of the Company Group.

14. **SEVERABILITY**. Whenever possible, each provision of this letter will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this letter is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision of this letter, but such invalid, illegal or unenforceable provision will be reformed, construed and enforced so as to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

15. **ACKNOWLEDGEMENT**. You hereby acknowledge (a) that you have consulted with or have had the opportunity to consult with independent counsel of your own choice concerning this letter, and have been advised to do so by the Company, and (b) that you have read and understand this letter, are fully aware of its legal effect, and have entered into it freely based on your own judgment.

16. **SECTION 409A OF THE CODE**.

(a) The compensation and benefits payable under this letter are not intended to constitute "nonqualified deferred compensation" within the meaning of Section 409A of the Code. Notwithstanding any provision of this letter to the contrary, in the event that the Company determines that any payments or benefits payable hereunder may be subject to Section 409A of

the Code, the Company may (without any obligation to do so or to indemnify you for failure to do so) adopt such amendments to this letter or take any other actions that the Company determines are necessary or appropriate to (a) exempt such payments and benefits from Section 409A of the Code in order to preserve the intended tax treatment of such payments or benefits, or (b) comply with the requirements of Section 409A of the Code and thereby avoid the application of penalty taxes thereunder. To the extent that any payments or benefits under this letter are deemed to be subject to Section 409A of the Code, this letter will be interpreted in accordance with Section 409A of the Code and Department of Treasury Regulations and other interpretive guidance issued thereunder.

(b) Notwithstanding anything to the contrary in this letter, no compensation or benefits, including without limitation any severance payments or benefits payable under Section 7 above, shall be paid to you during the six (6)-month period following your Separation from Service to the extent that paying such amounts at the time or times indicated in this letter would result in a prohibited distribution under Section 409A(a)(2)(b)(i) of the Code. If the payment of any such amounts is delayed as a result of the previous sentence, then on the first business day following the end of such six (6)-month period (or such earlier date upon which such amount can be paid under Section 409A of the Code without resulting in a prohibited distribution, including as a result of your death), the Company shall pay you a lump-sum amount equal to the cumulative amount that would have otherwise been payable to you during such six-month period.

(c) To the extent that any reimbursements or corresponding in-kind benefits provided to you under this letter are deemed to constitute compensation to you, such amounts will be paid or reimbursed reasonably promptly, but not later than December 31 of the year following the year in which the expense was incurred. The amount of any such payments or expense reimbursements in one year will not affect the expenses or in-kind benefits eligible for payment or reimbursement in any other taxable year, and your right to such payments or reimbursement of any such expenses will not be subject to liquidation or exchange for any other benefit.

[SIGNATURE PAGE FOLLOWS]

Please confirm your agreement to the foregoing by signing and dating the enclosed duplicate original of this letter in the space provided below for your signature and returning it to us in the enclosed, self-addressed stamped envelope. Please retain one fully-executed original for your files.

Sincerely,

**ACCURAY INCORPORATED**,
a Delaware Corporation

By: /s/ Euan S. Thomson, Ph.D
Name: Euan Thomson, Ph.D.
Title: President & Chief Executive Officer

Accepted and Agreed,

By: /s/ Darren J. Milliken
Name: Darren J. Milliken

Date: 5/18/09

**EXHIBIT A**

For purposes of this letter, "**Change in Control**" means and includes each of the following:

(a) A transaction or series of transactions (other than an offering of the Company's common stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the " **Exchange Act**")) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in clause (a) or clause (c) hereof) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "**Successor Entity**")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this clause (c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(d) The Company's stockholders approve a liquidation or dissolution of the Company.

**Exhibit 21.1**

**Subsidiaries of the Registrant**

| Name | State or Jurisdiction of Organization |
|---|---|
| Accuray International SARL | Switzerland |
| Accuray Europe SAS | France |
| Accuray UK, Ltd. | United Kingdom |
| Accuray Asia Ltd. | Hong Kong |
| Accuray Japan K.K. | Japan |
| Accuray Spain, S.L.U. | Spain |
| Accuray Medical Equipment (India) Private Limited. | India |
| Accuray Medical Equipment (SEA) Private Limited. | Singapore |
| Accuray Medical Equipment (Rus) LLC. | Russia |
| Accuray Medical Equipment GmbH. | Germany |
| Accuray Tibbi Cihazlar Ve Malzemeler Ithalat Ihracat Anonim Sirketi. | Turkey |

QuickLinks

**Exhibit 23.1**

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We have issued our reports dated September 8, 2009, with respect to the consolidated financial statements, schedule, and internal control over financial reporting included in the Annual Report of Accuray Incorporated on Form 10-K for the year ended June 30, 2009. We hereby consent to the incorporation by reference of said reports in the Registration Statements of Accuray Incorporated on Form S-8 (File No. 333-157120, effective February 5, 2009 and File No. 333-141194, File No. 333-141195 and File No. 333-141197, effective March 9, 2007).

/s/ GRANT THORNTON LLP

San Francisco, California
September 8, 2009

QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

**Exhibit 31.1**

**Certifications**

I, Euan S. Thomson, Ph.D., certify that:

1. I have reviewed this report on Form 10-K of Accuray Incorporated, a Delaware corporation;

2. Based on my knowledge, this annual 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 conclusion 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 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: September 8, 2009

/s/ EUAN S. THOMSON, PH.D.

Euan S. Thomson, Ph.D.
*President and Chief Executive Officer*

QuickLinks

QuickLinks -- Click here to rapidly navigate through this document

**Exhibit 31.2**

I, Derek Bertocci, certify that:

1. I have reviewed this report on Form 10-K of Accuray Incorporated, a Delaware corporation;

2. Based on my knowledge, this annual 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 conclusion 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 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: September 8, 2009

/s/ DEREK BERTOCCI

Derek Bertocci

*Senior Vice President and Chief Financial Officer*

QuickLinks

Exhibit 31.2

**Exhibit 32.1**

**Certification of Chief Executive Officer and Chief Financial Officer**

Pursuant to 18 U.S.C. § 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Accuray Incorporated, a Delaware corporation (the "*Company*") hereby certifies, to such officer's knowledge, that:

(i) the accompanying Annual Report on Form 10-K of the Company for the twelve months ended June 27, 2009 (the "*Report*") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: September 8, 2009

/s/ EUAN S. THOMSON, PH.D.

Euan S. Thomson, Ph.D.
*President and Chief Executive Officer*

/s/ DEREK BERTOCCI

Derek Bertocci
*Senior Vice President and Chief Financial Officer*

QuickLinks