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

FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES
PURSUANT TO SECTION 12(b) or (g) OF THE SECURITIES EXCHANGE ACT OF 1934

SUNSHINE HEART, INC.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**68-0533453** (I.R.S. Employer Identification Number)
7651 Anagram Drive **Eden Prairie, Minnesota** (Address of principal executive offices)	**55344** (zip code)

(952) 345-4200
(Issuer's telephone number, including area code)

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

Title of each class to be so registered	Name of each exchange on which each class is to be registered
Common stock, par value $0.0001 per share	The NASDAQ Stock Market LLC

Securities to be registered under Section 12(g) of the Act:

None
(Title of Class)

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 the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o	Accelerated filer o
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company x

Cautionary Note Regarding Forward-Looking Statements

This registration statement contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. In some cases, you can identify forward-looking statements by the following words: "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "ongoing," "plan," "potential," "predict," "project," "should," "will," "would," or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. Forward-looking statements are not 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. Forward-looking statements are based on information available at the time the statements are made and involve known and unknown risks, uncertainties and other factors that may cause our results, levels of activity, performance or achievements to be materially different from the information expressed or implied by the forward-looking statements in this registration statement. These factors include:

- our ability to obtain additional financing;
- the cost, timing and results of our clinical trials, regulatory submissions and approvals;
- our ability to develop sales, marketing and distribution capabilities;
- continued manufacturing services and supplies of critical components from our business partners;
- the rate of market acceptance of our C-Pulse System;
- our ability to obtain adequate reimbursement from third party payers;

- the cost of defending, in litigation or otherwise, any claims that we infringe third-party patent or other intellectual property rights or that our product is defective;

- our ability to protect and enforce our intellectual property rights;

- our ability to effectively manage our growth;

- our estimates regarding our capital requirements and our need for additional financing; and

- other risk factors included under "Risk Factors" in this registration statement.

You should read the matters described in "Risk Factors" and the other cautionary statements made in this registration statement as being applicable to all related forward-looking statements wherever they appear in this registration statement. We cannot assure you that the forward-looking statements in this registration statement will prove to be accurate and therefore you are encouraged not to place undue reliance on forward-looking statements. You should read this registration statement completely. Other than as required by law, we undertake no obligation to update or revise these forward-looking statements, even though our situation may change in the future.

Trademarks

C-Pulse® and Sunshine Heart™ and other trademarks or service marks of Sunshine Heart appearing in this registration statement are the property of Sunshine Heart, Inc. Trade names, trademarks and service marks of other companies appearing in this registration statement are the property of the respective owners.

Market Data

We obtained industry and market data used throughout this registration statement through our research, surveys and studies conducted by third parties and industry and general publications. We have not independently verified market and industry data from third-party sources.

Reverse Stock Split

We intend to effect a reverse stock split of our common stock ranging from 250 for 1 to 100 for 1 prior to the effective date of this registration statement. Except as otherwise indicated, none of the share or per share information referenced throughout this registration statement has been adjusted to reflect this reverse stock split.

Fiscal Year

Historically, our fiscal years have consisted of 12-month periods ending June 30. In September 2011, we changed our fiscal year to coincide with the calendar year. As a result, June 30, 2011 was our last fiscal year that will end on June 30, we will have a six-month fiscal year that began on July 1, 2011 and will end on December 31, 2011, and all future fiscal years will begin on January 1 and end on December 31 of that year. Except as otherwise indicated, all references in this registration statement to "fiscal 2010" or "2010" refer to the 12-month period ended December 31, 2010 and all references to a year or fiscal year prior to 2010 refer to the 12-month period ended on December 31 of the year referenced.

Currency

Unless otherwise indicated in this registration statement, all references to AUD or A$ are to Australian Dollars, the lawful currency of the Commonwealth of Australia, and all references to $ or dollars are to U.S. Dollars.

Other Information

In this registration statement, we, our, us and company refer to Sunshine Heart, Inc. and its subsidiary, except where the context otherwise requires.

The information in this registration statement speaks only as of the date it is filed with the U.S. Securities and Exchange Commission unless the information specifically indicates that another date applies.

ITEM 1 — BUSINESS

Overview

We are an early stage medical device company focused on developing, manufacturing and commercializing our C-Pulse Heart Assist System, for treatment of Class III and ambulatory Class IV heart failure. The C-Pulse Heart Assist System utilizes the scientific principles of intra-aortic balloon counter-pulsation applied in an extra-aortic approach to assist the left ventricle by reducing the workload required to pump blood throughout the body, while increasing blood flow to the coronary arteries.

We are conducting clinical trials of our C-Pulse in the U.S., which we expect to extend into 2015 before we will have a determination if it can be marketed in the U.S. We completed enrollment of the feasibility phase of our clinical trial in the first half of 2011. Upon completion of the six-month follow-up period, we expect to submit the test data to the United States Food and Drug Administration, or FDA, in the fourth quarter of 2011. Shortly thereafter, we expect to submit an investigation device exemption, or IDE, application to the FDA for approval of the pivotal trial.

We are seeking CE Mark for the C-Pulse and anticipate that we will obtain approval early in 2012. We have taken initial steps to develop a network of physicians and clinics in targeted countries in Europe, to be supported by direct sales personnel, in anticipation of expanding our clinical research activities and commencing commercial sales of the C-Pulse in Europe following CE Mark approval.

We incurred net losses of $7.6 million and $5.3 million in the years ended December 31, 2010 and 2009, respectively, and $6.3 million for the six months ended June 30, 2011. We expect to continue to incur net losses as we complete our clinical trials.

The Heart Failure Market

Heart failure is a progressive disease caused by impairment in the heart's ability to pump blood to the various organs of the body. Patients with heart failure commonly experience shortness of breath, fatigue, difficulty exercising and swelling of the legs. The heart becomes weak or stiff and enlarges over time making it harder to pump the blood needed for the body to function properly.

Heart failure is one of the leading causes of death in the U.S. and other developed countries. The American Heart Association estimates that 5.7 million people in the U.S. age 20 and over are affected by heart failure, with an estimated 670,000 new cases diagnosed each year. Nearly 30% of heart failure patients are below the age of 60. In addition, the Journal of Cardiac Failure reported in January 2011 that re-hospitalization due to worsening heart failure is the number one heath care expense in the U.S.

The severity of heart failure depends on how well a person's heart is able to pump blood throughout the body. A common measure of heart failure severity is New York Heart Association, or NYHA, Class guideline. Patients are classified as follows based on their symptoms and functional limitations.

- *Class I (Mild)* — Patients have no limits to daily activities and are able to do all normal daily activities without becoming tired, short of breath or having heart palpitations.

- *Class II (Mild)* — Patients have some limits to daily activities. Patients are comfortable at rest, but normal activities may cause them to be tired, short of breath or have heart palpitations.

- *Class III (Moderate)* — Patients' daily activities are significantly limited. Patients are comfortable at rest, but are unable to do daily activities without becoming tired, short of breath or having heart palpitations.

- *Class IV (Severe)* — Patients are unable to do any physical activity without discomfort. Patients become tired, short of breath and possibly have heart palpitations even when they are at rest. Any physical activity makes discomfort worse.

Our C-Pulse Heart Assist System targets Class III and ambulatory Class IV patients as defined by the NYHA. It is estimated that approximately 1.5 million heart failure patients in the U.S. fall into this classification range, and approximately 5 million worldwide are similarly affected. In addition to the symptoms described above, patients with Class III and ambulatory Class IV heart failure typically experience dizziness, low blood pressure and fluid retention.

Treatment alternatives currently available for Class III heart failure patients in the U.S. consist primarily of pharmacological therapies and pacing devices that are designed to stimulate the heart. Although these devices have shown to provide symptomatic relief and prolong the life of patients, these treatments do not always halt the progression of congestive heart failure. Circulatory assist devices, specifically left ventricular assist devices, or LVADs, have been used to treat Class IV patients in the U.S., and recently one product received FDA approval in the U.S. for Class IIIb patients. These devices are designed to take over some or all of the pumping function of the heart by mechanically pumping blood into the aorta. Although such devices are effective in increasing blood flow, these devices are implanted in the patient's body and by design are in contact with the patient's bloodstream, increasing the risk of adverse events, including thrombosis, bleeding and neurologic events.

Our Product

The C-Pulse Heart Assist System utilizes the scientific principles of intra-aortic balloon counter-pulsation applied in an extra-aortic approach to assist the left ventricle by reducing the workload required to pump blood throughout the body, while increasing blood flow to the coronary arteries. Combined, these potential benefits may help reverse the heart failure process or maintain the patient's current condition, thereby potentially preventing the need for later stage heart failure devices, such as LVADs, artificial hearts or transplants.

We initially implanted the C-Pulse System in patients via a full sternotomy. We have developed tools to allow the C-Pulse to be implanted via a small pacemaker-like incision between the patient's ribs and sternum rather than a full sternotomy, and we completed our first implant using this less invasive procedure in 2010.

Once implanted, the C-Pulse cuff is positioned on the outside of the patient's ascending aorta above the aortic valve. An electrocardiogram sensing lead is then attached to the heart to determine timing for cuff inflation and deflation in synchronization with the heartbeat. As the heart fills with blood, the C-Pulse cuff inflates to push blood from the aorta to the rest of the body and to the heart muscle and to the coronary arteries. Just before the heart pumps, the C-Pulse cuff deflates to open up the aorta and reduce the heart's workload, allowing the heart to pump with less effort. The C-Pulse cuff and electrical leads are connected to a single line that is run through the abdomen wall to connect to a power driver outside the body. The system's driver can be placed inside a carrying bag. Because the C-Pulse System remains outside the blood system, there is potentially less risk of blood clots and stroke in comparison to other mechanical devices that reside or function in the bloodstream.

The C-Pulse System is an earlier intervention than other mechanical therapies, such as LVADs. This device does not directly contact the patient's blood and it may be turned on or off at any time allowing the patient intervals of freedom to perform certain activities. Our less invasive procedure for implanting the C-Pulse System also may reduce procedural time, hospital stays, overall cost and patient risk as compared to treatment options that require a full sternotomy.

Clinical Development

The C-Pulse feasibility study is primarily designed to assess safety and provide indications of performance of this device in moderate to severe heart failure patients who suffer from symptoms such as shortness of breath and reduced mobility. We completed enrollment and implantation of 20 patients in the North American feasibility phase of our clinical trial in the first half of 2011. Upon completion of the six-month follow-up period, we expect to submit the test data to the FDA in the fourth quarter of 2011. Shortly thereafter, we expect to submit an IDE application to the FDA for approval of the pivotal trial. We anticipate that we will have pivotal study IDE approval by first half of 2012 and begin enrollment. In addition, the FDA has approved an expansion protocol to allow us to implant up to 20 additional patients and add two additional centers to our current feasibility study.

Enrollment in the IDE trial is expected to take approximately 26 months, and follow-up is expected to take up to an additional year from the completion of enrollment. Upon completion of the IDE pivotal study we expect to submit a pre-market approval, or PMA, application to the FDA seeking approval to commercialize the C-Pulse System in the United States. The PMA process generally takes approximately one year after submission of the application.

We are seeking CE Mark for the C-Pulse based on the data from our North American feasibility study. We anticipate that C-Pulse will have CE Mark in early 2012.

Research and Development

Our research and development expense in the years ended December 31, 2010 and 2009 totaled $6.2 million and $3.4 million, respectively, and was $4.7 million and $2.7 million for the six months ended June 30, 2011 and 2010, respectively. Research and development costs include activities related to research, development, design, testing and manufacturing of prototypes of our products as well as costs associated with certain clinical and regulatory activities.

In June 2011 we completed an initial animal study of a next-generation, fully implantable C-Pulse System. This next-generation system would be powered by a wireless, external battery unit, with the power driver and cuff implanted in the patient's body. A fully implantable system would eliminate the need for wires to breach the patient's skin, reducing the risk of infection and increasing the patient's comfort. The study resulted in an increase to the animal's heart function. While we continue to focus on commercializing our current C-Pulse System, we believe development of a next-generation, fully implantable C-Pulse System would benefit our business and prospects.

We expect our research and development expenses to increase as we continue to conduct clinical trials and perform research and develop on improvements to our C-Pulse Heart Assist System, such as the development of a fully implantable system.

Sales and Marketing

Our C-Pulse Heart Assist System is not approved for sale in any jurisdiction. We are seeking CE Mark for the C-Pulse and anticipate that we will obtain approval early in 2012. We recently completed enrollment in our feasibility clinical trial of our C-Pulse in the U.S., and we expect to commence the pivotal clinical trial in early 2012, which is projected to extend into 2015 before we will have a determination if we can apply to market it in the U.S.

We have taken initial steps to develop a network of physicians and clinics in targeted countries in Europe, to be supported by direct sales personnel, in anticipation of expanding our clinical research activities and commencing commercial sales of the C-Pulse in Europe following CE Mark approval. In conjunction with this process, we intend to file for reimbursement in these selected countries.

If we obtain regulatory approval to sell our product commercially in the European Union, we intend to develop and expand a network of physicians and clinics in those countries and leverage the approvals to enter other targeted markets throughout the world.

Manufacturers and Suppliers

Our products currently are utilized only in connection with clinical trials. We outsource the manufacture of our products to suppliers with our activities directed toward supply chain management and packaging the products for distribution to clinics and hospitals. If we obtain regulatory approvals necessary to commercialize our C-Pulse Heart Assist System, our outsourced manufacturers will need to increase their production of our product or we will need to develop capabilities to manufacture the product ourselves.

A number of critical components of our C-Pulse Heart Assist System, including the driver unit, cuff and interface lead are provided by outside suppliers and then tested and packaged by us in-house. We maintain supply agreements with a small number of primary suppliers.

Intellectual Property

We have established an intellectual property portfolio through which we seek to protect our products and technology. As of September 29, 2011, our portfolio consisted of 27 issued patents, of which 11 were issued in the U.S. and 16 were issued in other countries including Australia, Canada, India, Japan and Mexico. We also have 30 patent applications pending, including 10 in the U.S. and the remaining in the countries previously listed as well as in China, the European Union and the United Kingdom. Our patents and patent applications cover various aspects of both the methodology as well as the design of the C-Pulse Heart Assist System device and related components.

We have developed technical knowledge that although non-patentable, we consider to be significant in enabling us to compete. It is our policy to enter into confidentiality agreements with each of our employees and consultants prohibiting the disclosure of any confidential information or trade secrets. In addition, these agreements provide that any inventions or discoveries by employees and consultants relating to our business will be assigned to us and become our sole property.

Despite our patent rights and policies with regard to confidential information, trade secrets and inventions, we may be subject to challenges to the validity of our patents, claims that our products allegedly infringe the patent rights of others and the disclosure of our confidential information or trade secrets. These and other risks are described more fully under the heading “Risks Relating to our Intellectual Property” in the “Risks Factors” section of this registration statement.

At this time we are not a party to any material legal proceedings that relate to patents or proprietary rights.

Competition

Competition from medical device and medical device divisions of healthcare companies, pharmaceutical companies and gene- and cell-based therapies is intense and is expected to increase. The vast majority of Class III and Class IV heart failure patients still receive pharmacological treatment and a smaller percentage are treated with LVADs and other medical devices. We therefore continue to expect new competitors both from the pharmacological and the medical device space. Among the medical device competitors are Thoratec Corporation, HeartWare International Inc., CircuLite, Inc., and to a lesser extent, AbioMed, Inc., Jarvik Heart, Inc., MicroMed Technology, Inc., SynCardia Systems, Inc., Terumo Heart, Inc. and WorldHeart Corporation in the U.S. and Europe and Berlin Heart GmbH in Europe, and a range of other small, specialized medical device companies with devices at varying stages of development. Some of these competitors are larger than we are and have greater financial resources and name recognition than we do.

If approved for sale, we believe that key competitive factors of the C-Pulse will be the following:

- the C-Pulse’s lower risk profile resulting from its position outside a patient’s blood system;
- the ability to disconnect the C-Pulse without harm to the patient, which is not possible with later stage approved circulatory support heart failure treatments, and which we believe improves patients’ quality of life and the convenience of using our device as compared to many other devices; and
- the minimally invasive manner in which the C-Pulse can be implanted, which involves only small incisions to the chest rather than a full sternotomy.

Third-Party Reimbursement

If approved in the U.S., the C-Pulse is expected to be purchased primarily by customers, such as hospitals, who then would bill various third party payers for the services provided to the patients. These payers, which include Medicare, Medicaid, private health insurance companies and managed care organizations, would then reimburse our customers based on established payment formulas that take into account part or all of the cost associated with these devices and the related procedures performed.

The agency responsible for administering the Medicare program, the Centers for Medicare & Medicaid Services, and a majority of private insurers have approved reimbursement for our C-Pulse in clinical trials. The FDA has assigned the C-Pulse System to a Category B designation under IDE number G070096. By assigning the C-Pulse System a Category B designation, the FDA determined that the C-Pulse System is non-experimental/investigational. A non-experimental/investigational device refers to a device believed to be in Class I or Class II, or a device believed to be in Class III for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained FDA approval for that device type.

With an IDE number assigned, providers are allowed to seek coverage and reimbursement for the C-Pulse System under the Medicare program from their Medicare fiscal intermediary for hospital services, carrier for physician services, or Medicare Administrative Contractor, for both services. We cannot be assured, however, that fiscal intermediaries will make payment.

Healthcare laws in the U.S. and other countries are subject to ongoing changes, including changes to the amount of reimbursement for hospital services. Legislative proposals can substantially change the way healthcare is financed by both governmental and private insurers and may negatively impact payment rates for our products. Also, from time to time there are a number of legislative, regulatory and other proposals both at the federal and state levels; it remains uncertain whether there will be any future changes that will be proposed or finalized and what effect, if any, such legislation or regulations would have on our business. However, in the U.S. and international markets, we expect that both government and third-party payors will continue to attempt to contain or reduce the costs of healthcare by challenging the prices charged for healthcare products and services.

Government Regulations

Regulation by governmental authorities in the U.S. and foreign countries is a significant factor in the manufacture and marketing of our current and future products and in our ongoing product research and development activities. All of our proposed products will require regulatory approval prior to commercialization. In particular, medical devices are subject to rigorous pre-clinical testing as a condition of approval by the FDA and by similar authorities in foreign countries.

United States

In the U.S., the FDA regulates the design, manufacture, distribution and promotion of medical devices pursuant to the Federal Food, Drug, and Cosmetic Act, or FDCA, and its regulations. Our C-Pulse Heart Assist System is regulated as a medical device. To obtain FDA approval to market the C-Pulse, the FDA requires proof of safety and efficacy in human clinical trials performed under an IDE. An IDE application must contain pre-clinical test data supporting the safety of the product for human investigational use, information on manufacturing processes and procedures, proposed clinical protocols and other information. If the IDE application is approved, human clinical trials may begin. The trials must be conducted in compliance with FDA regulations and with the approval of institutional review boards. Clinical trials are subject to central registration requirements. The results obtained from these trials are submitted to the FDA in support of a PMA application.

Products must be manufactured in registered establishments and must be manufactured in accordance with Quality System Regulations, or QSR. Furthermore, the FDA may at any time inspect our facilities to determine whether we have adequate compliance with FDA regulations, including the QSR, which requires manufacturers to follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the design and manufacturing process.

We are also subject to regulation by various state authorities, which may inspect our facilities and manufacturing processes and enforce state regulations. Failure to comply with applicable state regulations may result in seizures, injunctions or other types of enforcement actions.

Healthcare Regulation

Our business is subject to extensive federal and state government regulation. This includes the federal Anti-Kickback Law and similar state anti-kickback laws, the federal False Claims Act, and the Health Insurance Portability and Accountability Act of 1996, or HIPAA, and similar state laws addressing privacy and security. Although we believe that our operations materially comply with the laws governing our industry, it is possible that non-compliance with existing laws or the adoption of new laws or interpretations of existing laws could adversely affect our financial performance.

Fraud and Abuse Laws

The healthcare industry is subject to extensive federal and state regulation. In particular, the federal Anti-Kickback Law 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 for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. The definition of “remuneration” has been broadly interpreted to include anything of value, including for example gifts, discounts, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payments, ownership interests, and providing anything at less than its fair market value. In addition, there is no one generally accepted definition of intent for purposes of finding a violation of the Anti-Kickback Law. For instance, one court has stated that an arrangement will violate the Anti-Kickback Law where any party has the intent to unlawfully induce referrals. In contrast, another court has opined that a party must engage in the proscribed conduct with the specific intent to disobey the law in order to be found in violation of the Anti-Kickback Law. The lack of uniform interpretation of the Anti-Kickback Law makes compliance with the law difficult. The penalties for violating the Anti-Kickback Law can be severe. These sanctions include criminal penalties and civil sanctions, including fines, imprisonment and possible exclusion from the Medicare and Medicaid programs.

The Anti-Kickback Law is broad, and it prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. Recognizing that the Anti-Kickback Law is broad and may technically prohibit many innocuous or beneficial arrangements within the healthcare industry, the U.S. Department of Health and Human Services issued regulations in July of 1991, which the Department has referred to as “safe harbors.” These safe harbor regulations set forth certain provisions which, if met in form and substance, will assure healthcare providers and other parties that they will not be prosecuted under the federal Anti-Kickback Law. Additional safe harbor provisions providing similar protections have been published intermittently since 1991. Our arrangements with physicians, physician practice groups, hospitals and other persons or entities who are in a position to refer may not fully meet the stringent criteria specified in the various safe harbors. Although full compliance with these provisions ensures against prosecution under the federal Anti-Kickback Law, the failure of a transaction or arrangement to fit within a specific safe harbor does not necessarily mean that the transaction or arrangement is illegal or that prosecution under the federal Anti-Kickback Law will be pursued. Conduct and business arrangements that do not fully satisfy one of these safe harbor provisions may result in increased scrutiny by government enforcement authorities such as the U.S. Department of Health and Human Services Office of Inspector General.

Many states have adopted laws similar to the federal Anti-Kickback Law. Some of these state prohibitions apply to referral of patients for healthcare services reimbursed by any source, not only the Medicare and Medicaid programs. Although we believe that we comply with both federal and state anti-kickback laws, any finding of a violation of these laws could subject us to criminal and civil penalties or possible exclusion from federal or state healthcare programs. Such penalties would adversely affect our financial performance and our ability to operate our business.

HIPAA created new federal statutes to prevent 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 such as the Medicare and Medicaid 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 or exclusion from government sponsored programs. Both federal and state government agencies are continuing

heightened and coordinated civil and criminal enforcement efforts. As part of announced enforcement agency work plans, the federal government will continue to scrutinize, among other things, the billing practices of hospitals and other providers of healthcare services. The federal government also has increased funding to fight healthcare fraud, and it is coordinating its enforcement efforts among various agencies, such as the U.S. Department of Justice, the Office of Inspector General and state Medicaid fraud control units. We believe that the healthcare industry will continue to be subject to increased government scrutiny and investigations.

Federal False Claims Act

Another trend affecting the healthcare industry is the increased use of the federal False Claims Act and, in particular, actions under the False Claims Act’s “whistleblower” provisions. Those provisions allow a private individual to bring actions on behalf of the government alleging that the defendant has defrauded the federal government. After the individual has initiated the lawsuit, the government must decide whether to intervene in the lawsuit and to become the primary prosecutor. If the government declines to join the lawsuit, then the individual may choose to pursue the case alone, in which case the individual’s counsel will have primary control over the prosecution, although the government must be kept apprised of the progress of the lawsuit. Whether or not the federal government intervenes in the case, it will receive the majority of any recovery. If the litigation is successful, the individual is entitled to no less than 15%, but no more than 30%, of whatever amount the government recovers. The percentage of the individual’s recovery varies, depending on whether the government intervened in the case and other factors. Recently, the number of suits brought against healthcare providers by private individuals has increased dramatically. In addition, various states are considering or have enacted laws modeled after the federal False Claims Act. Under the Deficit Reduction Act of

2005 states are being encouraged to adopt false claims acts similar to the federal False Claims Act, which establish liability for submission of fraudulent claims to the State Medicaid program and contain whistleblower provisions. Even in instances when a whistleblower action is dismissed with no judgment or settlement, we may incur substantial legal fees and other costs relating to an investigation. Future actions under the False Claims Act may result in significant fines and legal fees, which would adversely affect our financial performance and our ability to operate our business.

Further, on May 20, 2009, President Obama signed into law the Fraud Enforcement and Recovery Act of 2009, which greatly expanded the types of entities and conduct subject to the False Claims Act. We strive to ensure that we meet applicable billing requirements. However, the costs of defending claims under the False Claims Act, as well as sanctions imposed under the Act, could significantly affect our financial performance.

Health Insurance Portability and Accountability Act of 1996

In addition to creating the new federal statutes discussed above, HIPAA also establishes uniform standards governing the conduct of certain electronic healthcare transactions and protecting the security and privacy of individually identifiable health information maintained or transmitted by healthcare providers, health plans and healthcare clearinghouses. Three standards have been promulgated under HIPAA with which we currently are required to comply. We must comply with the Standards for Privacy of Individually Identifiable Health Information, or Privacy Standards, which restrict our use and disclosure of certain individually identifiable health information. We have been required to comply with the Privacy Standards since April 14, 2003.

The American Recovery and Reinvestment Act of 2009, signed into law on February 17, 2009, dramatically expanded, among other things, (1) the scope of HIPAA to also include “business associates,” or independent contractors who receive or obtain protected health information in connection with providing a service to the covered entity, (2) substantive security and privacy obligations, including new federal security breach notification requirements to affected individuals and Department of Health and Human Services and potentially media outlets, (3) restrictions on marketing communications and a prohibition on covered entities or business associates from receiving remuneration in exchange for protected health information, and (4) the civil and criminal penalties that may be imposed for HIPAA violations, increasing the annual cap in penalties from $25,000 to $1.5 million per year. We believe that we are not generally a business associate under HIPAA and we believe that we are in compliance with all of the applicable HIPAA standards, rules and regulations. However, if we fail to comply with these standards, we could be subject to criminal penalties and civil sanctions. In addition to federal regulations issued under HIPAA, some states have enacted privacy and security statutes or regulations that, in some cases, are more stringent than those issued under HIPAA. In those cases it may be necessary to modify our operations and procedures to comply with the more stringent state laws, which may entail significant and costly changes for us. We

believe that we are in compliance with such state laws and regulations. However, if we fail to comply with applicable state laws and regulations, we could be subject to additional sanctions.

International Regulations

We are also subject to regulation in each of the foreign countries where we intend to distribute the C-Pulse. These regulations relate to product standards, packaging and labeling requirements, import restrictions, tariff regulations, duties and tax requirements. Many of the regulations applicable to our products in these countries are similar to those of the FDA. The national health or social security organizations of certain countries require our products to be qualified before they can be marketed in those countries.

The primary regulatory environment in Europe is that of the European Union, which consists of 27 member states in Europe. The European Union has adopted two directives that cover medical devices—Directive 93/42/EEC covering medical devices and Directive 90/385/EEC for active implantable medical devices, as well as numerous standards that govern and harmonize the national laws and standards regulating the design, manufacture, clinical trials, labeling, adverse event reporting and post market surveillance activities for medical devices that are marketed in member states. Medical devices that comply with the requirements of the national law of the member state in which they are first marketed will be entitled to bear CE Marking, indicating that the device conforms to applicable regulatory requirements, and, accordingly, can be commercially marketed within EU states and other countries that recognize this mark for regulatory purposes. We are currently seeking CE Marking for the C-Pulse Heart Assist System which we have targeted to be complete in early 2012.

Other Regulations

We are also subject to various federal, state and local laws and regulations relating to such matters as safe working conditions, laboratory and manufacturing practices and the use, handling and disposal of hazardous or potentially hazardous substances used in connection with our research and development and manufacturing activities. Specifically, the manufacture of our biomaterials is subject to compliance with federal environmental regulations and by various state and local agencies. Although we believe we are in compliance with these laws and regulations in all material respects, we cannot provide assurance that we will not be required to incur significant costs to comply with environmental laws or regulations in the future.

Employees

As of June 30, 2011, we had 23 employees, consisting of 20 full-time and 3 part-time employees. 16 employees, including all but one of our executive officers are located at our offices in Eden Prairie, Minnesota, or are otherwise based in the U.S. The remainder, mostly research and development personnel, are located in our Australia office or are otherwise based outside of the U.S. None of our employees are covered by a collective bargaining agreement. We consider relations with our employees to be good.

Corporate Information

Sunshine Heart, Inc. was incorporated in Delaware on August 22, 2002. We began operating our business through Sunshine Heart Company Pty Ltd, which currently is a wholly owned Australian subsidiary of Sunshine Heart, Inc., in November 1999. Since September 2004, Chess Depositary Instruments, or CDIs, representing beneficial ownership of our common stock have been have traded on the Australian Securities Exchange, or ASX, under the symbol “SHC”. Each CDI represents one share of our common stock, although we anticipate adjusting this ratio in connection with a reverse stock split we plan to effect prior to effectiveness of this registration statement.

Our principal executive offices are located at 7651 Anagram Drive, Eden Prairie, Minnesota 55344, and our telephone number is (952) 345-4200. Our website address is www.sunshineheart.com. The information on, or that may be accessed through, our website is not incorporated by reference into and should not be considered a part of this registration statement.

Legal Proceedings

We are not currently involved in any material legal proceedings.

ITEM 1A — RISK FACTORS

Our business faces many risks. We believe the risks described below are the material risks we face. However, the risks described below may not be the only risks we face. Additional unknown risks or risks that we currently consider immaterial may also impair our business operations. If any of the events or circumstances described below actually occurs, our business, financial condition or results of operations could suffer, and the trading price of our shares of common stock could decline significantly. Investors should consider the specific risk factors discussed below, together with the "Cautionary Note Regarding Forward-Looking Statements" and the other information contained in this Form 10 and the other documents that we will file from time to time with the Securities and Exchange Commission.

Risks Relating to Our Business

We have incurred operating losses since our inception and anticipate that we will continue to incur operating losses for the foreseeable future.

We are an early stage company with a history of incurring net losses. We have incurred net losses since our inception, including net losses of $7.6 million and $5.3 million for the years ended December 31, 2010 and 2009, respectively, and $6.3 million for the six months ended June 30, 2011. As of June 30, 2011, our accumulated deficit was $55.3 million. We do not have any products that have been approved for marketing, and we continue to incur research and development and general and administrative expenses related to our operations. We expect to continue to incur significant and increasing operating losses for the foreseeable future as we incur costs associated with the conduct of clinical trials, continue our product research and development programs, seek regulatory approvals, expand our sales and marketing capabilities, increase manufacturing of our products and comply with the requirements related to being a U.S. public company listed on the ASX and, if our listing application is approved, the Nasdaq Capital Market. To become and remain profitable, we must succeed in developing and commercializing products with significant market potential. This will require us to succeed in a range of challenging activities, including conducting clinical trials, obtaining regulatory approvals, manufacturing products and marketing and selling commercial products. We may never succeed in these activities, and we may never generate revenues sufficient to achieve profitability. If we do achieve profitability, we may not be able to sustain it.

We will need additional funding to continue operations, which may not be available to us on favorable terms or at all.

Currently, we have no products available for commercial sale, and to date we have generated only limited product revenue from our feasibility study. We believe our cash and cash equivalents on hand will not be sufficient to fund our operations for more than the next 12 months. In addition, the report of our independent registered public accounting firm contains a going concern opinion in connection with its audit of our financial statements for the fiscal year ended December 31, 2010. Our continued operations are dependent on our ability to obtain additional funding during 2012. However, additional funding may not be available on terms favorable to us, or at all, and concern about our ability to continue as a going concern may place additional constraints on operations and make it more difficult for us to meet our obligations or adversely affect the terms of possible funding. If we raise additional funding through the issuance of equity securities, our stockholders may suffer dilution and our ability to use our net operating losses to offset future income may be limited. If we raise additional funding through debt financing, we may be required to accept terms that restrict our ability to incur additional indebtedness, force us to maintain specified liquidity or other ratios or restrict our ability to pay dividends or make acquisitions. If we are unable to secure additional funding, our product development programs and our commercialization efforts would be delayed, reduced or eliminated.

We have limited sales, marketing and distribution experience.

To develop and increase internal sales, distribution and marketing capabilities, we would have to invest significant amounts of financial and management resources. In developing these sales, marketing and distribution functions ourselves, we could face a number of risks, including:

- we may not be able to attract and build a significant marketing or sales force;
- the cost of establishing, training and providing regulatory oversight for a marketing or sales force may be substantial; and
- there are significant legal and regulatory risks in medical device marketing and sales that we have never faced, and any failure to comply with all legal and regulatory requirements for sales, marketing and distribution could result in enforcement action by the European countries, the FDA or other authorities that could jeopardize our ability to market the product or could subject us to substantial liability.

We plan to commercialize our products outside of the United States, which will expose us to risks associated with international operations.

We plan to commercialize our products outside of the United States and expect to commence clinical trials in certain European countries in addition to the U.S. and Canada. Conducting international operations subjects us to risks, including:

- costs of complying with varying regulatory requirements and potential, unexpected changes to those requirements;
- fluctuations in currency exchange rates;

- potentially adverse tax consequences, including the complexities of foreign value added tax systems and restrictions on the repatriation of earnings;
- government-imposed pricing controls on sales of our products;
- longer payment cycles and difficulties in collecting accounts receivable;
- difficulties in managing and staffing international operations;
- increased financial accounting and reporting burdens and complexities; and
- reduced or varied protection for intellectual property rights in some countries.

The occurrence of any one of these risks could negatively affect our international operations. Additionally, operating in international markets also requires significant management attention and financial resources. We cannot be certain that our operations in other countries will produce desired levels of revenues or profitability.

We depend on a limited number of manufacturers and suppliers of various critical components for our C-Pulse System. The loss of any of these manufacturer or supplier relationships could delay future clinical trials or prevent or delay commercialization of our C-Pulse System.

We rely entirely on third parties to manufacture our C-Pulse System and to supply us with all of the critical components of our C-Pulse System, including the driver, cuff and interface lead. If any of our existing suppliers were unable or unwilling to meet our demand for product components, or if the components or finished products that they supply do not meet quality and other specifications, clinical trials or commercialization of our product could be delayed and increase our expenses. Alternatively, if we have to switch to a replacement manufacturer or replacement supplier for any of our product components, we may face additional regulatory delays, and the manufacture and delivery of our C-Pulse System could be interrupted for an extended period of time and become significantly more

expensive, which could delay completion of future clinical trials or commercialization of our C-Pulse System and adversely affect our results of operations. In addition, we may be required to use different suppliers or components to obtain regulatory approval from the FDA.

If our manufacturers or our suppliers are unable to provide an adequate supply of our product following the start of commercialization, our growth could be limited and our business could be harmed.

In order to produce our C-Pulse System in the quantities that we anticipate will be required to meet anticipated market demand, we will need our manufacturers to increase, or scale-up, the production process by a significant factor over the current level of production. There are technical challenges to scaling-up manufacturing capacity and developing commercial-scale manufacturing facilities that may require the investment of substantial additional funds by our manufacturers and hiring and retaining additional management and technical personnel who have the necessary manufacturing experience. If our manufacturers are unable to do so, we may not be able to meet the requirements for the launch of the product or to meet future demand, if at all. We also may represent only a small portion of our supplier’s or manufacturer’s business and if they become capacity constrained they may choose to allocate their available resources to other customers that represent a larger portion of their business. We currently anticipate that we will continue to rely on third-party manufacturers and suppliers for the production of our C-Pulse System following commercialization. If we develop and obtain regulatory approval for our product and are unable to obtain a sufficient supply of our product, our revenue, business and financial prospects would be adversely affected.

If we are unable to manage our expected growth, we may not be able to commercialize our products.

We expect to expand our operations and grow our research and development, product development, regulatory, manufacturing, sales, marketing and administrative operations. This expansion has placed, and is expected to continue to place, a significant strain on our management and operational and financial resources. To manage any further growth and to commercialize our products, we will be required to improve existing and implement new operational and financial systems, procedures and controls and expand, train and manage our growing employee base. In addition, we will need to manage relationships with various manufacturers, suppliers and other organizations. Our ability to manage our operations and growth will require us to improve our operational, financial and management controls, as well as our internal reporting systems and controls. We may not be able to implement such improvements to our management information and internal control systems in an efficient and timely manner and may discover deficiencies in existing systems and controls. Our failure to accomplish any of these tasks could materially harm our business.

We compete against companies that have longer operating histories, more established products and greater resources than we do, which may prevent us from achieving further market penetration or improving operating results.

Competition in the medical device industry is intense. Our products will compete against current therapies, including pharmacological therapies, as well as products offered by public companies, such as Thoratec Corporation and HeartWare International, Inc., and several smaller specialized private companies, such as CircuLite, Inc. Some of these competitors have significantly greater financial and human resources than we do and have established reputations, as well as worldwide distribution channels and sales and marketing capabilities that are larger and more established than ours. Additional competitors may enter the market, and we are likely to compete with new companies in the future. We also face competition from other medical therapies which may focus on our target market as well as competition from manufacturers of pharmaceutical and other devices that have not yet been developed. Competition from these companies could adversely affect our business.

Our ability to compete effectively depends upon our ability to distinguish our company and our products from our competitors and their products. Factors affecting our competitive position include:

- financial resources;
- product performance and design;
- product safety;

- sales, marketing and distribution capabilities;
- manufacturing and assembly costs;
- success and timing of new product development and introductions;
- regulatory approvals; and
- intellectual property protection.

The competition for qualified personnel is particularly intense in our industry. If we are unable to retain or hire key personnel, we may not be able to sustain or grow our business.

Our ability to operate successfully and manage our potential future growth depends significantly upon our ability to attract, retain and motivate highly skilled and qualified research, technical, clinical, regulatory, sales, marketing, managerial and financial personnel. We face intense competition for such personnel, and we may not be able to attract, retain and motivate these individuals. We compete for talent with numerous companies, as well as universities and nonprofit research organizations. Our future success also depends on the personal efforts and abilities of the principal members of our senior management and scientific staff to provide strategic direction, manage our operations and maintain a cohesive and stable environment. We do not maintain key man life insurance on the lives of any of the members of our senior management. The loss of key personnel for any reason or our inability to hire, retain and motivate additional qualified personnel in the future could prevent us from sustaining or growing our business.

Product defects could adversely affect the results of our operations.

The design, manufacture and marketing of medical devices involve certain inherent risks. Manufacturing or design defects, unanticipated use of our products, or inadequate disclosure of risks relating to the use of the product can lead to injury or other adverse events. These events could lead to recalls or safety alerts relating to our products (either voluntary or required by the FDA or similar governmental authorities in other countries), and could result, in certain cases, in the removal of a product from the market. Any recall could result in significant costs, as well as negative publicity and damage to our reputation that could reduce demand for our products. Personal injuries relating to the use of our products can also result in product liability claims being brought against us. In some circumstances, such adverse events could also cause delays in new product approvals.

We may be sued for product liability, which could adversely affect our business.

The design, manufacture and marketing of medical devices carries a significant risk of product liability claims. Our products treat Class III and ambulatory Class IV heart failure for patients who typically have serious medical issues. As a result, our exposure to product liability claims may be heightened because the people who use our products have a high risk of suffering adverse outcomes, regardless of the safety or efficacy of our products.

We may be held liable if any product we develop and commercialize causes injury or is found otherwise unsuitable during product testing, manufacturing, marketing, sale or consumer use. The safety studies we must perform and the regulatory approvals required to commercialize our medical safety products will not protect us from any such liability. We carry product liability insurance with a $10 million aggregate limit. However, if there were to be product liability claims against us, our insurance may be insufficient to cover the expense of defending against such claims, or may be insufficient to pay or settle such claims. Furthermore, we may be unable to obtain adequate product liability insurance coverage for commercial sales of any of our approved products. If such insurance is insufficient to protect us, our results of operations will suffer. If any product liability claim is made against us, our reputation and future sales will be damaged, even if we have adequate insurance coverage. Even if a product liability claim against us is without merit or if we are not found liable for any damages, a product liability claim could result in decreased demand for our products, injury to our reputation, diversion of management’s attention from operation or our business, withdrawal of clinical trial participants, significant costs of related litigation, loss of revenue or the inability to commercialize our products under development.

Risks Relating to Regulation

We have no products approved for commercial sale, and our success will depend heavily on the success of our feasibility trials and a subsequent pivotal trial for our C-Pulse System. If we are unable to complete our feasibility trials, commence and complete our pivotal trial, or experience significant delays in either trial, or if the results of a trial do not meet its safety and efficacy endpoints, our ability to obtain regulatory approval to commercialize our product and to generate revenues will be harmed.

Our device, the C-Pulse System, is currently undergoing feasibility clinical trials at sites in the United States and Canada. Our United States feasibility clinical trial protocol requires us to obtain clinical data from at least 20 patients to assess device safety and potential efficacy from data collected. Upon completion of the six-month follow-up period for our feasibility trials, we expect to submit the test data to the FDA in the fourth quarter of 2011 and, shortly thereafter, to submit an IDE application to the FDA for approval of a pivotal trial.

Completion of either trial could be delayed or adverse events during the trial could cause us to modify the existing design, repeat or terminate the trial. If our clinical trial is delayed, if it must be repeated or if it is terminated, our costs associated with the trial will increase, and it will take us longer to obtain regulatory approvals and commercialize the product. Our clinical trials may also be suspended or terminated at any time by regulatory authorities or by us. FDA scrutiny of IDE applications has intensified in recent years, increasing the risk of delay.

Even if we commence and complete a pivotal clinical trial, it must demonstrate the safety and efficacy of the C-Pulse System by meeting the trial’s endpoints before we can commercial the C-Pulse System. The inability to achieve the safety or efficacy endpoints in a pivotal trial could delay our timeline for obtaining regulatory approval to commercialize our products.

In addition to successfully completing our clinical trials, we will need to receive approval from regulatory agencies in each country in which we seek to sell our products. Approval procedures vary among countries and can involve additional product testing and additional administrative review periods. The time required to obtain approval varies from country to country and approval in one country does not ensure regulatory approval in another. In addition, a failure or delay in obtaining regulatory approval in one country may negatively impact the regulatory process in others. We cannot assure you when, or if, we will be able to commence sales in any jurisdiction within or outside the United States.

Any failure or significant delay in successfully completing clinical trials for our products or obtaining regulatory approvals could harm our financial results and our prospects and cause us to seek additional funding.

***Even if our feasibility clinical trial is successful and we obtain foreign regulatory approvals, we will need to obtain FDA approval to commercialize our product in the United States, which will require us to receive FDA approval to conduct clinical trials in the United States and to complete those trials successfully. If we fail to obtain approval from the FDA, we will not be able to market and sell our products in the United States*.**

We do not have the necessary regulatory approvals to commercialize our C-Pulse System in the United States, which we believe is the largest potential market for our C-Pulse System. We intend to use the data from our North American feasibility trial to support an IDE application for FDA approval of a pivotal trial the C-Pulse System, but we can offer no assurance that our IDE application will be approved or that we will ever obtain FDA approval of the C-Pulse System or any future products.

In order to obtain FDA approval for our C-Pulse System, we will be required to receive a PMA from the FDA. A PMA must be supported by pre-clinical and clinical trials to demonstrate safety and efficacy. A clinical trial will be required to support an application for a PMA, and we will be seeking FDA approval of our IDE that will allow us to commence a clinical trial in the United States. We intend to commence our U.S. pivotal trial in the first half of 2012, but there can be no assurance that our U.S. pivotal trial will begin or be completed on schedule or at all. Even if completed, we do not know if this trial will produce clinically meaningful results sufficient to show the safety and efficacy of our products so as to support an application for a PMA.

The process of obtaining a PMA from the FDA for our C-Pulse System, or any future products or enhancements or modifications to any products, could:

- take a significant period of time;
- require the expenditure of substantial resources;
- involve rigorous pre-clinical and clinical testing;
- require changes to our products; and
- result in limitations on the indicated uses of the products.

In addition, recent, widely-publicized events concerning the safety of certain drug, food and medical device products have raised concerns among members of Congress, medical professionals, and the public regarding the FDA’s handling of these events and its perceived lack of oversight over regulated products. The increased attention to safety and oversight issues could result in a more cautious approach by the FDA to approvals for devices such as ours, which could delay or prevent FDA approval of our C-Pulse System.

There can be no assurance that we will receive the required approvals from the FDA or if we do receive the required approvals, that we will receive them on a timely basis. The failure to receive product approval by the FDA could have a material adverse effect on our business, financial condition or results of operations.

We may be unable to enroll and complete our planned U.S. pivotal trial for the C-Pulse System or other clinical trials, which could prevent or delay regulatory approval of the C-Pulse System and impair our financial position.

We intend to commence our U.S. pivotal trial in the first half of 2012. The trial is designed to be a randomized trial that includes 270 patents and is expected to involve more than 20 locations. Conducting a clinical trial of this size is a complex and uncertain process.

The commencement of our trial could be delayed for a variety of reasons, including:

- reaching agreement on acceptable terms with prospective clinical trial sites;
- manufacturing sufficient quantities of our C-Pulse System;
- obtaining institutional review board approval to conduct the trial at a prospective site; and
- obtaining sufficient patient enrollment, which is a function of many factors, including the size of the patient population, the nature of the protocol, the proximity of patients to clinical sites and the eligibility criteria for the trial.

Once the trial has begun, the completion of the trial, and our other ongoing clinical trials, could be delayed, suspended or terminated for several reasons, including:

- ongoing discussions with regulatory authorities regarding the scope or design of our preclinical results or clinical trial or requests for supplemental information with respect to our preclinical results or clinical trial results;
- our failure or inability to conduct the clinical trials in accordance with regulatory requirements;

- sites currently participating in the trial may drop out of the trial, which may require us to engage new sites or petition the FDA for an expansion of the number of sites that are permitted to be involved in the trial;
- patients may not remain in or complete, clinical trials at the rates we expect;

- patients may experience serious adverse events or side effects during the trial, which, whether or not related to our product, could cause the FDA or other regulatory authorities to place the clinical trial on hold; and
- clinical investigators may not perform our clinical trials on our anticipated schedule or consistent with the clinical trial protocol and good clinical practice requirements.

If our clinical trials are delayed it will take us longer to ultimately commercialize a product or the delay could result in our being unable to do so. Moreover, our development costs will increase if we have material delays in our clinical trials or if we need to perform more or larger clinical trials than planned. Any of the foregoing could harm our financial results and our prospects and cause us to seek additional funding.

We depend on clinical investigators and clinical sites to enroll patients in our clinical trials, and on other third parties to manage the trials and to perform related data collection and analysis, and, as a result, we may face costs and delays that are outside of our control.

We have and plan to continue to rely on clinical investigators and clinical sites to enroll patients in our clinical trials, including our planned U.S. pivotal trial, and other third parties to manage the trials and to perform related data collection and analysis. However, we may not be able to control the amount and timing of resources that clinical sites may devote to our clinical trials. If these clinical investigators and clinical sites fail to enroll a sufficient number of patients in our clinical trials, to ensure compliance by patients with clinical protocols or comply with regulatory requirements, we will be unable to complete these trials, which could prevent us from obtaining regulatory approvals for our product. Our agreements with clinical investigators and clinical trial sites for clinical testing place substantial responsibilities on these parties and, if these parties fail to perform as expected, our trials could be delayed or terminated. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols, regulatory requirements or for other reasons, our clinical trials may be extended, delayed or terminated, or the clinical data may be rejected by the FDA, and we may be unable to obtain regulatory approval for, or successfully commercialize, our product.

Our manufacturers and suppliers might not meet regulatory quality standards applicable to manufacturing and quality processes, which could have an adverse effect on our financial results and prospects.

Even after products have received marketing approval or clearance, product approvals and clearances by the FDA can be withdrawn due to failure to comply with regulatory standards. We rely entirely on third parties to manufacture our C-Pulse System and those manufacturers are required to demonstrate and maintain compliance 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, control, manufacturing, labeling, quality assurance, packaging, storage and shipping of our products. The FDA enforces the QSR through periodic unannounced inspections. Compliance with applicable regulatory requirements is subject to continual review and is rigorously monitored through periodic inspections by the FDA. A failure by our manufacturers to comply with the QSR or to take satisfactory corrective action in response to an adverse QSR inspection could cause a significant delay in our ability to have our product manufactured and to complete our clinical trials, which would harm our financial results and our prospects. In addition, suppliers of components of, and products used to manufacture, our products must also comply with FDA and foreign regulatory requirements, which often require significant time, money and record-keeping and quality assurance efforts and subject us and our suppliers to potential regulatory inspections and stoppages.

We plan to operate in multiple regulatory environments that require costly and time consuming approvals.

Even if we obtain regulatory approvals to commercialize the C-Pulse System or any other product that we may develop, sales of our products in other jurisdictions will be subject to regulatory requirements that vary from country to country. The time and cost required to obtain approvals from these countries may be longer or shorter than that required for FDA approval, and requirements for licensing may differ from those of the FDA. Laws and regulations regarding the manufacture and sale of our products are subject to future changes, as are administrative interpretations and policies of regulatory agencies. If we fail to comply with applicable foreign, federal, state or local market laws or regulations, we could be subject to enforcement actions. Enforcement actions could include

product seizures, recalls, withdrawal of clearances or approvals, and civil and criminal penalties, which in each case would harm our business.

The C-Pulse System may never achieve market acceptance even if we obtain regulatory approvals.

Even if we obtain regulatory approvals to commercialize the C-Pulse System or any other product that we may develop, our products may not gain market acceptance among physicians, patients, health care payers or the medical community. The degree of market acceptance of any of the devices that we may develop will depend on a number of factors, including:

- the perceived effectiveness of the product;
- the prevalence and severity of any side effects;
- potential advantages over alternative treatments;
- the strength of marketing and distribution support; and

- sufficient third party coverage or reimbursement.

If our C-Pulse System, or any other product that we may develop, is approved but does not achieve an adequate level of acceptance by physicians, patients, health care payers and the medical community, we may not generate product revenue and we may not become profitable or be able to sustain profitability.

If we fail to obtain an adequate level of reimbursement for our product by third party payers, there may be no commercially viable markets for our product or the markets may be much smaller than expected.

The availability and levels of reimbursement by governmental and other third party payers affect the market for our product. The FDA has assigned the C-Pulse System to a Category B designation under IDE number G070096. By assigning the C-Pulse System a Category B designation, the FDA determined that the C-Pulse System is non-experimental/investigational. A non-experimental/investigational device refers to a device believed to be in Class I or Class II, or a device believed to be in Class III for which the incremental risk is the primary risk in question (that is, underlying questions of safety and effectiveness of that device type have been resolved), or it is known that the device type can be safe and effective because, for example, other manufacturers have obtained FDA approval for that device type.

Reimbursement and health care payment systems in international markets vary significantly by country, and include both government sponsored health care and private insurance. To obtain reimbursement or pricing approval in some countries, we may be required to produce clinical data, which may involve one or more clinical trials, that compares the cost-effectiveness of our products to other available therapies. We may not obtain international reimbursement or pricing approvals in a timely manner, if at all. Our failure to receive international reimbursement or pricing approvals would negatively impact market acceptance of our products in the international markets in which those approvals are sought.

We believe that future reimbursement may be subject to increased restrictions both in the United States and in international markets. Future legislation, regulation or reimbursement policies of third party payers may adversely affect the demand for our products currently under development and limit our ability to sell the C-Pulse System or any future products on a profitable basis. In addition, third party payers continually attempt to contain or reduce the costs of health care by challenging the prices charged for health care products and services. If reimbursement for our products is unavailable in any market or limited in scope or amount or if pricing is set at unsatisfactory levels, market acceptance of our products would be impaired and our future revenues, if any, would be adversely affected.

We may be subject, directly or indirectly, to U.S. federal and state healthcare fraud and abuse and false claims laws and regulations. Prosecutions under such laws have increased in recent years and we may become subject to such litigation. If we are unable to, or have not fully complied with such laws, we could face substantial penalties.

If we are successful in achieving regulatory approval to market our C-Pulse System, our operations will be directly, or indirectly through our customers, subject to various state and federal fraud and abuse laws, including, without limitation, the federal Anti-Kickback Statute and federal False Claims Act. These laws may impact, among other things, our proposed sales, marketing and education programs.

The federal Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. Several courts have interpreted the statute’s intent requirement to mean that if any one purpose of an arrangement involving remuneration is to induce referrals of federal healthcare covered business, the statute has been violated. The Anti-Kickback Statute is broad and, despite a series of narrow safe harbors, prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. Penalties for violations of the federal Anti-Kickback Statute include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. Many states have also adopted laws similar to the federal Anti-Kickback Statute, some of which apply to the referral of patients for healthcare items or services reimbursed by any source, not only the Medicare and Medicaid programs.

The federal False Claims Act prohibits persons from knowingly filing, or causing to be filed, a false claim to, or the knowing use of false statements to obtain payment from the federal government. 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, commonly known as “whistleblowers,” may share in any amounts paid by the entity to the government in fines or settlement. The frequency of filing qui tam actions has increased significantly in recent years, causing greater numbers of medical device, pharmaceutical and healthcare companies to have to defend a False Claim Act action. When an entity is determined to have violated the federal False Claims Act, it may be required to pay up to three times the actual damages sustained by the government, plus civil penalties for each separate false claim. Various states have also enacted laws modeled after the federal False Claims Act.

We are unable to predict whether we could be subject to actions under any of these laws, or the impact of such actions. If we are found to be in violation of any of the laws described above and other applicable state and federal fraud and abuse laws, we may be subject to penalties, including civil and criminal penalties, damages, fines, exclusion from government healthcare reimbursement programs and the curtailment or restructuring of our operations.

We will incur increased costs as a result of being a U.S. reporting company and we have no experience as a U.S. reporting company.

Upon the effectiveness of this registration statement, we will become subject to the periodic reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Although we have been listed on the ASX for several years and have been required to file financial information and make certain other filings with the ASX, our status as a U.S. reporting company under the Exchange Act will cause us to incur additional legal, accounting and other expenses that we have not previously incurred, including costs related to compliance with the requirements of the Sarbanes-Oxley Act of 2002. We expect these rules and regulations to increase our legal and financial compliance costs and to make some activities more time-consuming and costly. We also expect these rules and regulations may 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 individuals to serve on our board of directors or as executive officers. We cannot predict or estimate the amount of additional costs we may incur or the timing of such costs.

Risks Relating to our Intellectual Property

We may not be able to protect our intellectual property rights effectively, which could have an adverse effect on our business, financial condition or results of operations.

Our success depends in part on our ability to obtain and maintain protection in the United States and other countries of the intellectual property relating to or incorporated into our technology and products. As of September 29, 2011, we owned 11 issued patents in the United States and 10 patent applications in the United States, as well as 16 issued patents and 20 patent applications in foreign jurisdictions. The U.S. patents expire between June 9, 2020 and October 28, 2024. Our pending and future patent applications may not issue as patents or, if issued, may not issue in a form that will provide us any competitive advantage. Even if issued, existing or future patents may be challenged, narrowed, invalidated or circumvented, which could limit our ability to stop competitors from marketing similar products or limit the length of terms of patent protection we may have for our products. Changes in patent laws or their interpretation in the United States and other countries could also diminish the value of our intellectual property or narrow the scope of our patent protection. In addition, the legal systems of certain countries do not favor the aggressive enforcement of patents, and the laws of foreign countries may not protect our rights to the same extent as the laws of the United States. As a result, our patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours. In order to preserve and enforce our patent and other intellectual property rights, we may need to make claims or file lawsuits against third parties. This can entail significant costs to us and divert our management's attention from developing and commercializing our products.

Intellectual property litigation could be costly and disruptive to us.

In recent years, there has been significant litigation involving medical device patents and other intellectual property rights. From time to time, third parties may assert patent, copyright, trademark and other intellectual property rights to technologies used in our business. Any claims, with or without merit, could be time-consuming, result in costly litigation, divert the efforts of our technical and management personnel or require us to pay substantial damages. If we are unsuccessful in defending ourselves against these types of claims, we may be required to do one or more of the following:

- stop our ongoing or planned clinical trials or delay or abandon commercialization of the product that is the subject of the suit;
- attempt to obtain a license to sell or use the relevant technology or substitute technology, which license may not be available on reasonable terms or at all; or
- redesign those products that use the relevant technology.

In the event a claim against us was successful and we could not obtain a license to the relevant technology on acceptable terms or license a substitute technology or redesign our products to avoid infringement, our business would be significantly harmed.

If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.

In addition to patented technology, we rely on our unpatented proprietary technology, trade secrets, processes and know-how. We generally seek to protect this information by confidentiality agreements with our employees, consultants, scientific advisors and third parties. These agreements may be breached, and we may not have adequate remedies for any such breach. In addition, our trade secrets may otherwise become known or be independently developed by competitors. To the extent that our employees, consultants or contractors use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions.

Risk Factors Related to Ownership of Our Common Stock

An active trading market for our shares of common stock in the United States may not develop and the trading price of our shares of common stock may fluctuate significantly.

Prior to the effective date of this registration statement, our shares have not been listed on any U.S. securities exchange and we have not registered any of our shares of common stock for sale in the United States. Our common stock has been listed on the ASX in the form of CDIs since 2004 and has experienced limited trading volume. The reported average daily trading volume in our common stock on the ASX (in the form of CDIs) for the three month period ended June 30, 2011, was approximately 595,000 shares. All of our shares of common stock that we have sold have been sold in reliance on exemptions from registration under the Securities Act of 1933, as amended, which we refer to as the Securities Act. As of September 29, 2011,

- 235,634,277 shares of our common stock in the form of CDIs were held by persons or entity other than our directors, officers and other affiliates and were eligible for sale in the public market;
- 400,947,831 shares of our common stock in the form of CDIs were held by persons or entity other than our directors, officers and other affiliates and were subject to re-sale restrictions of Rule 144 under the Securities Act; and
- 567,165,826 shares of our common stock in the form of CDIs were held by our directors, officers and other affiliates and were subject to re-sale restrictions of Rule 144 under the Securities Act.

Although we have applied to list our shares of common stock on Nasdaq Capital Market and intend to file with the SEC registration statements on Form S-8 covering approximately 176 million shares of our common stock issuable under our equity plans, there can be no assurance that a liquid public market for our shares will develop in the United States. If an active trading market does not develop in the United States, the market price and liquidity of our shares may be adversely affected.

The price of our common stock may fluctuate significantly.

Our common stock in the form of CDIs has been traded on the ASX in the form of CDIs since 2004. The price of our CDIs has been, and is likely to continue to be, volatile, which means that it could decline substantially within a short period of time. For example, our closing per CDI price ranged from A$0.023 to A$0.063 for the 12 months ended June 30, 2011. The price of our common stock could fluctuate significantly for many reasons, including the following:

- future announcements concerning us or our competitors;
- regulatory developments, enforcement actions bearing on advertising, marketing or sales, and disclosure regarding completed, ongoing or future clinical trials;
- quarterly variations in operating results, which we have experienced in the past and expect to experience in the future;
- introduction of new products;
- acquisition or loss of significant manufacturers, distributors or suppliers;

- business acquisitions or divestitures;
- changes in third party reimbursement practices;
- fluctuations of investor interest in the medical device sector; and
- fluctuations in the economy, world political events or general market conditions.

In addition, stock markets in general and the market for shares of health care stocks in particular, have experienced extreme price and volume fluctuations in recent years, fluctuations that frequently have been unrelated to the operating performance of the affected companies. These broad market fluctuations may adversely affect the market price of our common stock. The market price of our common stock could decline below its current price and the market price of our shares may fluctuate significantly in the future. These fluctuations may be unrelated to our performance.

Our directors and executive officers hold substantial control over us and could limit your ability to influence the outcome of key transactions, including changes of control.

As of September 26, 2011, our executive officers and directors and entities affiliated with them beneficially owned, in the aggregate (including options or warrants exercisable currently or within 60 days of September 26, 2011), approximately 52.9% of our outstanding common stock. Our executive officers, directors and affiliated entities, if acting together, would be able to influence significantly all matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other significant corporate transactions. The concentration of ownership of our common stock may have the effect of delaying, preventing or deterring a change of control of our company, could deprive our stockholders and CDI holders of an opportunity to receive a premium for their common stock and CDIs as part of a sale of our company and may affect the market price of our common stock and CDIs. This significant concentration of stock ownership may adversely affect the trading price of our common stock and CDIs due to investors' perception that conflicts of interest may exist or arise.

If there are substantial sales of shares of our common stock, our share price could decline.

If our existing stockholders sell a large number of shares of our common stock or CDIs if the public market, should one develop, perceives that existing stockholders might sell a large number of shares or CDIs the price at which our common stock or CDIs trade could decline significantly. Sales of substantial amounts of our common stock by stockholders in the public market, or even the potential for such sales, are likely to adversely affect the market price of our common stock and CDIs.

In general, beginning 90 days after the effective date of this registration statement, under Rule 144 a person who is not one of our directors, officers or other affiliates at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock for at least six months, would be entitled to sell an unlimited number of shares of our common stock that currently are restricted from being sold in the public market, provided current public information about us is available. Beginning 90 days after the effective date of this registration statement, our directors, officers and other affiliates who have beneficially owned shares of our common stock for at least six months will be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of our common stock then outstanding; and
- the average weekly trading volume of our common stock on all national securities exchanges and/or reported through the automated quotation system of a registered securities exchange during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale, or if no such notice is required, the date of receipt of the order to execute the sale.

We do not intend to pay cash dividends on our common stock in the foreseeable future.

We have never declared or paid any cash dividends on our common stock, and we currently do not anticipate paying any cash dividends in the foreseeable future. We intend to retain any earnings to finance the development and expansion of our products and business. Accordingly, our stockholders and CDI holders will not realize a return on their investment unless the trading price of our common stock and CDIs appreciate.

We may be subject to arbitrage risks.

Investors may seek to profit by exploiting the difference, if any, between the price of our CDIs on the ASX and the price of our shares available for sale in the U.S., whether such sales would take place on a U.S. securities exchange or in the over-the-counter market or otherwise. Such arbitrage activities could cause our share price in the market with the higher value to decrease to the price set by the market with the lower value.

Investors could lose confidence in our financial reports, and the value of our common stock may be adversely affected, if our internal controls over financial reporting are found not to be effective by management or by an independent registered public accounting firm or if we make disclosure of existing or potential significant deficiencies or material weaknesses in those controls.

In connection with becoming a company required to file reports with the SEC, we will be required to comply with the internal control evaluation and certification requirements of Section 404 of the Sarbanes-Oxley Act of 2002. We continue to evaluate our existing internal controls over financial reporting against the standards adopted by the Public Company Accounting Oversight Board, or the PCAOB. During the course of our ongoing evaluation of the internal controls, we may identify areas requiring improvement, and may have to design enhanced processes and controls to address issues identified through this review. Remediating any deficiencies, significant deficiencies or material weaknesses that we or our independent registered public accounting firm may identify may require us to incur significant costs and expend significant time and management resources. We cannot assure you that any of the measures we implement to remedy any such deficiencies will effectively mitigate or remedy such deficiencies. The existence of one or more material weaknesses could affect the accuracy and timing of our financial reporting. Investors could lose confidence in our financial reports, and the value of our common stock and CDIs may be adversely affected, if our internal controls over financial reporting are found not to be effective by management or by an independent registered public accounting firm or if we make disclosure of existing or potential significant deficiencies or material weaknesses in those controls.

Our certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain litigation that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with the Company.

Our certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees or our stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (iv) any other action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and to have consented to the provisions described above. This forum selection provision may limit our stockholders' ability to obtain a judicial forum that they find favorable for disputes with us or our directors, officers or other employees or stockholders.

Our certificate of incorporation, bylaws, and the Delaware General Corporation Law may delay or deter a change of control transaction.

Certain provisions of our certificate of incorporation and bylaws may have the effect of deterring takeovers, such as those provisions authorizing our board of directors to issue, from time to time, any series of preferred stock and fix the designation, powers, preferences and rights of the shares of such series of preferred stock; prohibiting stockholders from acting by written consent in lieu of a meeting; requiring advance notice of stockholder intention to put forth director nominees or bring up other business at a stockholders' meeting; prohibiting stockholders from

calling a special meeting of stockholders; requiring a 66 $^{2}/_{3}$% majority stockholder approval in order for stockholders to amend certain provisions of our certificate of incorporation or bylaws or adopt new bylaws; providing that, subject to the rights of preferred shares, the directors will be divided into three classes and the number of directors is to be fixed exclusively by our board of directors; and providing that none of our directors may be removed without cause. Section 203 of the Delaware General Corporation Law, from which we did not elect to opt out, provides that if a holder acquires 15% or more of our stock without prior approval of our board of directors, that holder will be subject to certain restrictions on its ability to acquire us within three years. These provisions may delay or deter a change of control of us, and could limit the price that investors might be willing to pay in the future for shares of our common stock.

It may be difficult to effect service of U.S. process and enforce U.S. legal process against our directors.

Five of our eight directors reside outside of the United States, principally in the Commonwealth of Australia. A substantial portion of the assets of our directors also are located outside of the United States. Therefore, it may not be possible to effect service of process within the United States upon these persons in order to enforce judgments of U.S. courts against these persons based on the civil liability provisions of the U.S. federal securities laws. In addition, there is doubt as to the enforceability in Australia, in original actions or in actions to enforce judgments of U.S. courts, of claims predicated solely upon U.S. federal securities laws.

ITEM 2 — FINANCIAL INFORMATION

Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated and condensed financial statements and related notes appearing elsewhere in this registration statement. This discussion and analysis includes certain forward-looking statements that involve risks, uncertainties and assumptions. You should review the "Risk Factors" section of this registration statement for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by such forward-looking statements. See "Cautionary Note Regarding Forward-Looking Statements" at the beginning of this registration statement.

Overview

We are an early stage medical device company focused on developing, manufacturing and commercializing our C-Pulse Heart Assist System, for treatment of Class III and ambulatory Class IV heart failure. The C-Pulse Heart Assist System utilizes the scientific principles of intra-aortic balloon counter-pulsation applied in an extra-aortic approach to assist the left ventricle by reducing the workload required to pump blood throughout the body, while increasing blood flow to the coronary arteries.

We are conducting clinical trials of our C-Pulse in the U.S., which we expect to extend into 2015 before we will have a determination if it can be marketed in the U.S. We completed enrollment of our feasibility phase of our clinical trial in the first half of 2011. Upon completion of the six-month follow-up period, we expect to submit the test data to the FDA in the fourth quarter of 2011. Shortly thereafter, we expect to submit an IDE application to the FDA for approval of our pivotal trial.

We are seeking CE Mark for the C-Pulse and anticipate that we will obtain approval early in 2012. We have taken initial steps to develop a network of physicians and clinics in targeted countries in Europe, to be supported by direct sales personnel, in anticipation of expanding our clinical research activities and commencing commercial sales of the C-Pulse in Europe following CE Mark approval.

Critical Accounting Policies and Estimates

Revenue Recognition: We recognize revenue when (i) persuasive evidence of a customer arrangement exists; (ii) the price is fixed or determinable and free of contingencies or uncertainties; (iii) collectability is reasonably assured; and (iv) product delivery has occurred, which is when product title transfers to the customer, or services have been rendered. Sales are not conditional based on customer acceptance provisions or installation

obligations. Our C-Pulse Heart Assist System is not approved for commercial sale. Our revenue consists solely of sales of the C-Pulse to hospitals and clinics under contract in conjunction with our clinical trials. For clinical trial implant revenue, the product title generally transfers on the date the product is implanted. We do not charge hospitals and clinics for shipping. We expense shipping costs at the time we report the related revenue and record such costs in cost of sales.

Foreign Currency Translation and Transactions: Foreign denominated monetary assets and liabilities are translated at the rate of exchange prevailing at the balance sheet date. Results of operations are translated using the average rates prevailing during the reporting period. Our Australian subsidiary's functional currency is the Australian Dollar. Translation adjustments result from translating the subsidiary's financial statements into our reporting currency, the U.S. Dollar. The translation adjustment has not been included in determining our net loss, but has been reported separately and is accumulated in a separate component of equity.

Effective January 1, 2011, we concluded that the functional currency of our U.S. based parent company is the U.S. Dollar. We have concluded that the functional currency of the Australian subsidiary remains the Australian Dollar.

Comprehensive Income (Loss): The components of comprehensive income (loss) include net income (loss) and the effects of foreign currency translation adjustments.

Stock-Based Compensation: We recognize all share-based payments, including grants of stock options in the income statement as an operating expense based on their fair value over the requisite service period.

We compute the estimated fair values of stock options using the Black-Scholes option pricing model. No tax benefit has been recorded due to the full valuation allowance on deferred tax assets that we have recorded.

Stock-based compensation expense is based on awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Equity instruments issued to non-employees, and for services and goods are shares of our common stock, warrants or options to purchase shares of our common stock. These shares, warrants or options are either fully-vested and exercisable at the date of grant or vest over a certain period during which services are provided. We expense the fair market value of these securities over the period in which the related services are received.

Going Concern: Our financial statements have been prepared and presented on a basis assuming we continue as a going concern.

During the years ended December 31, 2010 and 2009, and the six months ended June 30, 2011, we incurred losses from operations and net cash outflows from operating activities as disclosed in the consolidated statements of operations and cash flows, respectively.

Our ability to continue as a going concern is dependent on our ability to raise additional capital based on the achievement of existing milestones as and when required. Our directors, after due consideration, believe that we will be able to raise new equity capital as required to fund our business plan. Should the future capital raising not be successful, we may not be able to continue as a going concern. Furthermore, our ability to continue as a going concern is subject to our ability to develop and successfully commercialize the product being developed. If we are unable to obtain such funding of an amount and timing necessary to meet our future operational plans, or to successfully commercialize our intellectual property, we may be unable to continue as a going concern. No adjustments have been made relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should we not continue as a going concern.

Recent Accounting Pronouncements

In June 2011, the Financial Accounting Standards Board, or FASB, issued additional guidance for the presentation of comprehensive income. The new guidance changes the way other comprehensive income ("OCI")

appears within the financial statements. Companies will be required to show net income, OCI and total comprehensive income in one continuous statement or in two separate but consecutive statements. Components of OCI may no longer be presented solely in the statement of changes in shareholders' equity. Any reclassification between OCI and net income will be presented on the face of the financial statements. The new guidance is effective for our company beginning January 1, 2012. The adoption of the new guidance will not impact the measurement of net income or other comprehensive income.

In January 2010, FASB issued Accounting Standards Update, or ASU, 2010-06, *Improving Disclosure about Fair Value Measurements*. ASU 2010-06 revises two disclosure requirements concerning fair value measurements and clarifies two others. It requires separate presentation of significant transfers into and out of Levels 1 and 2 of the fair value hierarchy and disclosure of the reasons for such transfers. It also requires the presentation of purchases, sales, issuances and settlements within Level 3 on a gross basis rather than a net basis. The amendments also clarify that disclosures should be disaggregated by class of asset or liability and that disclosures about inputs and valuation techniques should be provided for both recurring and non-recurring fair value measurements. ASU 2010-06 is effective for interim and annual reporting periods beginning after December 15, 2009, except for certain Level 3 activity disclosure requirements that will be effective for reporting periods beginning after December 15, 2010.

In May 2011, FASB issued ASU 2011-04, *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS.* This accounting update generally aligns the principles for fair value measurements and the related disclosure requirements under U.S. GAAP and International Financial Reporting Standards. From a U.S. GAAP perspective, the amendments are largely clarifications, but some could have a significant effect on certain companies. A number of new disclosures also are required. Except for certain disclosures, the guidance applies to public and nonpublic companies and is to be applied prospectively. For public companies and nonpublic companies, the amendments are effective during interim and annual periods beginning after December 15, 2011. Early adoption by public companies is not permitted. Nonpublic companies may apply the amendments early, but no earlier than for interim periods beginning after December 15, 2011.

Financial Overview

We are an early stage medical device company focused on developing, manufacturing and commercializing our C-Pulse Heart Assist System, for treatment of Class III and ambulatory Class IV heart failure. Our activities since inception have consisted principally of raising capital, performing research and development and conducting preclinical and clinical trials. At June 30, 2011, we had an accumulated deficit of $55.3 million and we expect to incur losses for the foreseeable future. To date, we have been funded by private and public equity financings. Although we believe that we will be able to successfully fund our operations, there can be no assurance that we will be able to do so or that we will ever operate profitably.

Results of Operations

Comparison of Six Months Ended June 30, 2011 to Six Months Ended June 30, 2010

Revenue

Six Months Ended June 30, 2011	Six Months Ended June 30, 2010	Increase (Decrease)	% Change
$ —	$ 151,000	$ (151,000)	N/A

Our decrease in revenue for the six months ended June 30, 2011 compared to the same period in 2010 was primarily caused by completion of enrollment in our feasibility clinical trial in March 2011, after which we had no reimbursable implants. We expect our revenue will be minimal until we begin enrolling patients in our pivotal clinical trials, expected to commence in the first half of 2012.

Research and Development Expense

Six Months Ended June 30, 2011	Six Months Ended June 30, 2010	Increase (Decrease)	% Change
$ 4,666,000	$ 2,707,000	$ 1,959,000	72.4%

Our increase in research and development expense for the six months ended June 30, 2011 compared to the same period in 2010 was primarily caused by increased development activities related to our C-Pulse device and the accelerated development of a fully implantable model. We also increased regulatory and clinical personnel to support the completion of our feasibility clinical trial and to prepare for our pivotal clinical trial. We expect our research and development expense will increase in future periods as we add personnel to support our pivotal clinical trial and pursue our development efforts.

Selling, General and Administrative Expense

Six Months Ended June 30, 2011	Six Months Ended June 30, 2010	Increase (Decrease)	% Change
$ 1,820,000	$ 1,091,000	$ 729,000	66.8%

Our increase in selling, general and administrative expense for the six months ended June 30, 2011 compared to the same period in 2010 was primarily caused by increased professional fees and personnel costs as we develop our infrastructure and prepare for our pivotal clinical and Nasdaq listing. We expect our selling, general and administrative expense will increase in future periods as we further develop our infrastructure, invest in developing a sales force in Europe and incur professional fees and expenses associated with being listed on both the Nasdaq Capital Market and the ASX.

Interest Income

Six Months Ended June 30, 2011	Six Months Ended June 30, 2010	Increase (Decrease)	% Change
$ 197,000	$ 90,000	$ 107,000	118.8%

Our increase in other income for the six months ended June 30, 2011 compared to the same period in 2010 was primarily caused by increased interest income earned from our increased cash balances following the completion of our financing in September 2010.

Income Tax Benefit

Six Months Ended June 30, 2011	Six Months Ended June 30, 2010	Increase (Decrease)	% Change
—	$ 670,000	$ (670,000)	N/A

Our income tax benefit decreased for the six months ended June 30, 2011 compared to the same period in 2010 primarily due to a research and development tax credit in Australia that we received in the prior year period. We did not receive a similar tax rebate in the current year period based upon our expense levels.

Comparison of Year Ended December 31, 2010 to Year Ended December 31, 2009

Revenue

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 407,000	$ 224,000	$ 183,000	81.7%

Our increase in revenue for the year ended December 31, 2010 compared to the prior year was primarily caused by increased enrollments in our feasibility clinical trial during 2010.

Research and Development Expense

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 6,229,000	$ 3,425,000	$ 2,804,000	81.9%

Our increase in research and development expense for the year ended December 31, 2010 compared to the prior year was primarily caused by increased development activities related to our C-Pulse device and the recruitment of research and development, regulatory and clinical personnel, including executive level positions, to support the completion of our feasibility clinical trial and to prepare for our pivotal clinical trial.

Selling, General and Administrative Expense

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 2,598,000	$ 2,232,000	$ 366,000	16.4%

Our increase in selling, general and administrative expense for the year ended December 31, 2010 compared to the prior year was primarily caused by increased professional fees and personnel costs as we developed our infrastructure and transitioned our headquarter operations from California to Minnesota.

Interest Income

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 150,000	$ 91,000	$ 59,000	64.8%

Our increase in other income for the year ended December 31, 2010 compared to the prior year was primarily caused by increased interest income earned from our increased cash balances following the completion of our financing in September 2010.

Income Tax Benefit

Year Ended December 31, 2010	Year Ended December 31, 2009	Increase (Decrease)	% Change
$ 670,000	—	$ 670,000	N/A

Our income tax benefit increased for the year ended December 31, 2010 compared to the prior year was primarily due to a research and development tax credit in Australia that we received in 2010 that we did not receive in the prior year period.

Liquidity and Capital Resources

Sources of Liquidity

We have funded our operations primarily through a series of equity issuances, including the issuance of common shares in the form of CDIs for net proceeds of $11.9 million in 2010. As of June 30, 2011 and December 31, 2010 and 2009, cash and cash equivalents were $6.5 million, $12.4 million and $7.0 million, respectively. Subsequent to June 30, 2011, we received net proceeds of $7.7 million from the issuance of additional common shares in the form of CDIs. We believe that our cash on hand, together with the amount described above will be sufficient to fund our operations into 2012 as we prepare for the pivotal clinical trial, but that we will require additional financing within the next 12 months to sufficiently fund our operations. Although we have successfully financed our operations through the issuance of common stock to date, we cannot be assured that we will be able to continue to be successful in financing our operations in the future.

Cash Flows from Operating Activities

Net cash used in operating activities was $7.2 million in 2010, $5.8 million in 2009, and $6.2 million and $3.4 million in the six months ended June 30, 2011 and 2010, respectively. The net cash used in each of these periods primarily reflects the net loss for those periods, offset in part by depreciation, non-cash stock-based compensation and the effects of changes in operating assets and liabilities.

Cash Flows from Investing Activities

Net cash used in investing activities was $7,000 in 2010, $3,000 in 2009, and $43,000 and $0 for the six months ended June 30, 2011 and 2010, respectively. Cash used in investing activities is related to purchases of property and equipment.

Cash Flows from Financing Activities

Net cash provided by financing activities was $11.9 million in 2010, $8.0 million in 2009, and $183,000 and $0 in the six months ended June 30, 2011 and 2010, respectively. Net cash provided by financing activities was primarily attributable to proceeds from sales of our common stock.

Capital Resource Requirements

As of December 30, 2010, we did not have any material commitments for capital expenditures.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements.

ITEM 3 — PROPERTIES

We currently lease a 10,000 square foot facility in Eden Prairie, Minnesota that houses our corporate headquarters and substantially all of our functional areas, with the exception of a portion of our research and development activities. The lease expires September 30, 2012 and requires a monthly payment of approximately $11,000. We also lease approximately 2,000 square feet of office space in an office complex in St Leonards, New South Wales, Australia, for certain research and development activities. The lease extends through September 30, 2011, and extends on a month-to-month basis thereafter, with a three-month notice provision for termination. Monthly rent and electricity for this facility total approximately $14,000.

ITEM 4 — SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table shows the number of shares and percentage ownership of our common stock that were beneficially owned as of September 26, 2011 by each of our directors, by each of our executive officers named in the Summary Compensation Table under the heading “Item 6. Executive Compensation” below and by all of our

directors and executive officers as a group. Unless otherwise noted, the persons listed in the table have sole voting and investment power with respect to the shares owned by them.

Beneficial Ownership of Directors and Executive Officers

The following table sets forth certain information with respect to the beneficial ownership of our outstanding common stock as of September 26, 2011 by (i) each of our named executive officers listed in the Summary Compensation Table below; (ii) each of our directors; and (iii) all of our executive officers and directors as a group. Beneficial ownership is determined in accordance with the rules of the SEC. To our knowledge and subject to applicable community property laws, each of the holders of stock listed below has sole voting and investment power as to the stock owned unless otherwise noted. The address for each of our directors and named executive officers is c/o Sunshine Heart, Inc., 7651 Anagram Drive, Eden Prairie, Minnesota 55344.

Name of Beneficial Owner	Number of Shares	Percent(1)
Dr. Geoffrey Brooke	291,603,956(2)	23.2%
Paul Buckman	389,500(3)	*
Nicholas Callinan	9,969,221(4)	*
Dr. Mark Harvey	368,149,403(5)	29.0%
Debra Kridner	1,858,061(6)	*
Donal O’Dwyer	12,269,137(7)	1.0%
Dr. William Peters	15,571,690(8)	1.3%
David Rosa	12,848,333(9)	1.1%
Gregory Waller	—	—
All directors, director nominees, named executive officers and other executive officers as a group (11 persons)	716,396,802(10)	52.9%

* Less than 1%.

(1) Based on 1,203,747,934 shares outstanding as of September 26, 2011.

(2) Includes 238,951,964 shares owned by GBS Bioventures II A/C and GBS Bioventures III A/C, which we collectively refer to as GBS; 470,333 shares subject to outstanding options exercisable within 60 days of September 26, 2011; 49,781,659 shares subject to outstanding options held by GBS exercisable within 60 days of September 26, 2011; 2,400,000 shares acquirable upon exercise of outstanding warrants held by GBS exercisable within 60 days of September 26, 2011; and 97,000 shares subject to outstanding options exercisable within 60 days of September 26, 2011. Dr. Brooke is the managing director of GBS Venture Partners Pty Ltd, which manages each of GBS Bioventures II A/C and GBS Bioventures III A/C. Dr. Brooke disclaims beneficial ownership of the shares held by GBS except to the extent of his pecuniary interest therein.

(3) Includes 389,500 shares subject to outstanding options exercisable within 60 days of September 26, 2011.

(4) Includes 5,829,054 shares owned by Beraleigh Pty Ltd. and 4,140,167 shares subject to outstanding options exercisable within 60 days of September 26, 2011. Mr. Callinan is a director of Beraleigh Pty Ltd.

(5) Includes 150,000 shares owned by Dr. Harvey’s pension fund, for which he has the power to make investment and voting decisions. 300,142,260 shares owned by venture capital funds affiliated with CM Capital and 67,857,143 shares subject to outstanding options owned by CM Capital and its affiliated

funds exercisable within 60 days of September 26, 2011. Dr. Harvey disclaims beneficial ownership of the shares held by CM Capital and its affiliates except to the extent of his pecuniary interest therein.

(6) Includes 1,460,333 shares subject to outstanding options exercisable within 60 days of September 26, 2011.

(7) Includes 1,629,144 shares held by a family trust, for which Mr. O'Dwyer serves as a trustee, 7,758,095 shares held by a pension fund for which Mr. O'Dwyer and his wife jointly have the power to make investment and voting decisions, and 2,203,333 subject to outstanding options exercisable within 60 days of September 26, 2011.

(8) Includes 1,450,000 shares owned by Dr. William Peters and Szigetvary Trustee Services Ltd as trustees to Peters JAM Trust; 490,000 shares owned by Szigetvary Trustee Services Ltd; 7,000 shares owned by Dr. William Peters for the benefit of Ava Peters; 7,000 shares owned by Dr. William Peters for the benefit of Michael Peters; 10,464 owned by Dr. William Peters for the benefit of James Peters; 6,686,552 owned by Dr. William Peters and Apollo Trustees No. 1 Limited as trustees to Peters Apollo Trust; 280,000 shares acquirable upon exercise of outstanding warrants exercisable within 60 days of September 26, 2011; and 6,640,674 shares subject to outstanding options exercisable within 60 days of September 26, 2011.

(9) Includes 12,648,333 shares subject to outstanding options exercisable within 60 days of September 26, 2011.

(10) Consists of (i) 567,165,826 shares beneficially owned by the current directors and executive officers; and (ii) 149,230,976 shares issuable upon exercise of outstanding options or warrants that are exercisable within 60 days of September 26, 2011.

Beneficial Owners of More than Five Percent of Our Common Stock

Based on information filed with the ASX and provided to us by certain of our directors, the following table sets forth certain information with respect to the beneficial ownership of persons known by us to be beneficial owners of more than 5% of our common stock as of September 26, 2011. Beneficial ownership is determined in accordance with the rules of the SEC.

Name of Beneficial Owner	Number of Shares	Percent(1)
GBS Venture Partners Pty Ltd	291,133,623(2)	23.2%
Funds affiliated with CM Capital	367,999,403(3)	29.0%
Funds affiliated with Straus & Partners	114,361,344(4)	9.2%
Sectoral Asset Management Inc.	81,250,000(5)	6.6%

(1) Based on 1,203,747,934 shares outstanding as of September 26, 2011.

(2) Includes 49,781,659 shares subject to outstanding options exercisable within 60 days of September 26, 2011 and 2,400,000 shares acquirable upon exercise of outstanding warrants exercisable within 60 days of September 26, 2011. The address for GBS Venture Partners Pty Ltd is Harley House, Level 5, 71 Collins Street, Melbourne Vic 3000, Australia.

(3) Includes 67,857,143 shares subject to outstanding options exercisable within 60 days of September 26, 2011. The address for CM Capital is Level 9, 545 Queen Street, Brisbane QLD 4000, Australia.

(4) Based upon share registry provided to us by our transfer agent, Link Market Services. Includes 38,120,488 shares subject to outstanding warrants. The address for Straus & Partners is 605 Third Avenue New York, NY 10158-0180.

(5) Based upon share registry provided to us by our transfer agent, Link Market Services. Includes 38,120,448 shares subject to outstanding warrants. The address for Sectoral Asset Management is 1000 Sherbrooke St. West, #2120, Montreal, QC Canada H3A 3G4.

ITEM 5 — DIRECTORS AND EXECUTIVE OFFICERS

Directors and Executive Officers

Our directors and executive officers are as follows:

Name	Age	Position
Kevin Bassett	43	Vice President Research, Development & Quality Assurance
Debra Kridner	59	Vice President Research & Regulatory Affairs
Jeffrey Mathiesen	50	Chief Financial Officer and Secretary
Paul Buckman	55	Director
Dr. Geoffrey Brooke	55	Director
Nicholas Callinan	65	Director
Dr. Mark Harvey	46	Director
Dr. William Peters	46	Director; Chief Technology Officer & Medical Director
Donal O'Dwyer	58	Director
David Rosa	47	Director; Chief Executive Officer
Gregory Waller	61	Director

The principal occupation and business experience of each officer, director and key employee of the Company is as follows:

Executive Officers

Kevin Bassett: Mr. Basset is our Vice President of Research, Development and Quality Assurance, a position he has held since October 2010. From 2006 to 2010, Mr. Bassett served as the Senior Vice President of Research and Development, Operations, and Quality Assurance at Acorn Cardiovascular, a medical device company that develops treatments for patients with heart failure.

Debra Kridner: Ms. Kridner is our Vice President of Clinical Research and Regulatory Affairs, a position she has held since November 2009 on a consultant basis and since March 2010 as an employee of our company. From 2008 to 2009, Ms. Kridner worked as a consultant for her company Kridner Consulting LLC, which performed consulting services for medical device companies. From 2004 to 2008, Ms. Kridner served as the Vice President of Clinical Research and Regulatory Affairs for St. Jude Medical's Cardiac Surgery and Interventional Cardiology for the Cardiovascular Division.

Jeffrey Mathiesen: Since March 2011, Mr. Mathiesen has served as our Chief Financial Officer and Secretary. From December 2005 through April 2010, Mr. Mathiesen served as Vice President and Chief Financial Officer for Zareba Systems, Inc., a manufacturer and marketer of medical products, perimeter fencing and security systems. Zareba was a publicly traded company that was purchased by Woodstream Corporation in April 2010. Previous positions held by Mr. Mathiesen include Vice President and Chief Financial Officer for Delphax Technologies, Inc., a print solutions provider, from July 2004 to December 2005.

Directors

Dr. Geoff Brooke: Director since September 2003. Dr. Brooke is a managing director of GBS Venture Partners Pty Ltd., an Australian venture capital firm that seeks out investments in life sciences companies. Dr. Brooke co-founded the venture capital firm in October 1996.

Dr. Brooke's qualifications to serve on our board of directors include his experience in financial matters and fund raising as a fund manager and his experience with clinical medicine.

Paul Buckman: Director since February 2011. Mr. Buckman has served as Chief Executive Officer and Director of Pathway Medical Technologies, Inc. since September 2008. From December 2006 until September 2008, Mr. Buckman served as Chief Executive Officer of Devax, Inc., a developer and manufacturer of drug eluting stents, while also serving as Chairman of the Board of Directors for Pathway Medical Technologies, Inc. From August 2004 to December 2006, Mr. Buckman served as President of the Cardiology Division of St. Jude Medical, Inc., a diversified medical products company. Prior to joining St. Jude Medical, Mr. Buckman served as Chairman of the Board of Directors and Chief Executive Officer of ev3, LLC, a Minnesota-based medical device company focused on endovascular therapies that Mr. Buckman founded and developed into an $80 million business, from January 2001 to January 2004. Mr. Buckman has worked in the medical device industry for over 30 years, including 10 years at Scimed Life Systems, Inc. and Boston Scientific Corporation, where he held several executive positions before becoming President of the Cardiology Division of Boston Scientific in January 2000. In addition to Pathway Medical Technologies, Inc., Mr. Buckman also currently serves as a Director for SentreHeart, Inc., Conventus, and also as a Business Advisory Board member for Bio Star Ventures. In the past, Mr. Buckman has served on the boards of Velocimed, Inc., where he was a co-founder, EndiCor, Inc., Microvena, Inc., and Micro Therapeutics, Inc.

Mr. Buckman's qualifications to serve on our board of directors include his extensive experience in the management of medical device companies, including his collective eleven years of experience as a Chief Executive Officer for Pathway Medical and Devax, Inc.

Nicholas Callinan: Director since October 2008. Mr. Callinan is the chairman of our board of directors. Since 2004, he has served as Principal at Collins Hill Pty Ltd., a private equity advisory and consulting firm. From 2001 to 2003, Mr. Callinan served as the Senior Vice President and Chief Executive of SIV for Shell Internet Ventures, a company that invested in information technology companies worldwide. Previously, Mr. Callinan served as the Managing Director and Chief Executive of Central and Eastern European funds for Advent International Corporation, a company focused on private equity and venture capital fund management and investment.

Mr. Callinan's qualifications to serve on our board of directors include his experience as a Chief Executive Officer, a fund manager, and a board member for private companies throughout the world. In these roles, Mr. Callinan has aided numerous companies in developing their governance structure.

Dr. Mark Harvey: Director since September 2011. Since 2006, Dr. Harvey has served as a partner of CM Capital, an Australian venture capital firm that focuses on life sciences, telecommunications, information technology, and renewable energy ventures. In this role, Dr. Harvey has gained extensive experience in the formation, fund raising, and management of numerous life science companies.

Dr. Harvey's qualifications to serve on our board of directors include his extensive experience in the life sciences industry and general business experience due to his board service for other medical technology companies such as Osprey Medical Inc. and Pathway Therapeutics Ltd.

Donal O'Dwyer: Director since July 2004. Mr. O'Dwyer retired as worldwide President of Cordis Cardiology, the cardiology division of the Johnson & Johnson subsidiary, in 2003. Cordis is a developer and manufacturer of breakthrough stents, catheters and guidewires for interventional medicine, minimally invasive computer-based imaging, and electrophysiology. Prior to joining Cordis, Mr. O'Dwyer served as President of the Cardiovascular Group, Europe of Baxter International Inc., a global healthcare company that uses its expertise in medical devices, pharmaceuticals and biotechnology to create products that advance patient care worldwide.

Mr. O'Dwyer's qualifications to serve on our board of directors include his extensive experience in the medical technology industry and general business experience due to his board service for other medical technology companies such as Angioblast Systems Inc., Atcor Medical Holdings Ltd, Cochlear Limited and Mesoblast Ltd.

Dr. William Peters: Director since August 2002. Since 2002, Dr. Peters has served as our Chief Technology Officer and Medical Director. In addition to his role within our company, Dr. Peters is an honorary clinical research fellow with the Green Lane Cardiothoracic Surgical Unit at Auckland City Hospital in New Zealand.

Dr. Peters' qualifications to serve on our board of directors include his extensive experience with and expertise in cardiac medical technology, including his invention and development of devices and methods to achieve minimally cardiac surgery and his recognition in our industry gained from his authorship of numerous published articles regarding cardiac surgery and heart failure.

David Rosa: Director since July 2010. Mr. Rosa is our Chief Executive Officer, a position he has held since November 2009. From 2008 to November 2009, Mr. Rosa served as the Chief Executive Officer of Milksmart, Inc., a medical device company that specializes in medical devices for animals. From 2004 to 2008, Mr. Rosa served as the Vice President of Global Marketing for cardiac surgery and cardiology for St. Jude Medical.

Mr. Rosa's qualifications to serve on our board of directors include his experience in the medical device industry and his previous leadership experiences within medical device companies.

Gregory Waller: Director since August 2011. From 2006 to 2011, Mr. Waller was the Chief Financial Officer and Treasurer of Universal Building Products, Inc., which was a manufacturer of concrete forms and accessories for the residential and commercial projects in North America. Mr. Waller previously served as the Vice President of Finance, Chief Financial Officer, and Treasurer for Sybron Dental Specialties, Inc., a manufacturer of high technology dental, dental implant, and infection prevention products, from 1980 to 2005. Mr. Waller has served on the board of directors of Endologix Inc. since 2003. Mr. Waller also served on the board of directors of Clarient, Inc. and SenoRx, Inc. from 2006 until 2010. From 2006 to 2009, Mr. Waller served as a member of the board of directors of Alsius, Inc., and from 2009 to 2010, he served as a member of the board of directors of Biolase, Inc.

Mr. Waller's qualifications to serve on our board of directors include his 35 years of financial and management experience, including his experiences as a Chief Financial Officer for Universal Building Products, Inc. and Sybron Dental Specialties, Inc., and his familiarity with public company board functions from his services on the boards of other public companies.

As described above, Mr. Waller was the Chief Financial Officer and Treasurer of Universal Building Products from 2006 to 2011. Universal Building Products filed a voluntary petition for bankruptcy on August 4, 2010. Except as described in the preceding sentence, no other event has occurred during the past ten years requiring disclosure pursuant to Item 401(f) of Regulation S-K.

Director Classification

Our board of directors is divided into three classes with staggered three-year terms. At each annual general meeting of stockholders, the successors to directors whose terms then expire will be elected to serve from the time

of election and qualification until the third annual meeting following election. Our directors are divided among the three classes as follows:

- The Class II directors are Dr. Brooke and Mr. Rosa and their terms expire at the annual meeting of stockholders to be held in 2012;
- The Class III directors are Messrs. Callinan, O'Dwyer and Waller and their terms expire at the annual meeting of stockholders to be held in 2013; and
- The Class I directors are Dr. Peters, Mr. Buckman and Dr. Harvey and their terms expire at the annual meeting of stockholders to be held in 2014;

Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of one-third of the directors.

There is no family relationship between any director, executive officer or person nominated to become a director or executive officer.

Director Compensation

The following table sets forth certain information regarding compensation of person who served as one of our non-employee directors during the year ended June 30, 2011. During the year ended June 30, 2011, we did not provide any separate compensation to our directors who were also employees.

Name	Fees Earned or Paid in Cash ($)	Total ($)
John Brennan(1)	—	—
Paul Buckman	19,542	19,542
Geoffrey Brooke, MD	—	—
Nicholas Callinan	103,234	103,234
Crispin Marsh	50,853	50,853
Donal O'Dwyer	49,941	49,941

(1) Mr. Brennan resigned from our board of director in May 2011.

All amounts in the table above were converted from Australian Dollars to U.S. Dollars using the conversion rate in effect on the date of invoices submitted by the directors.

Pursuant to our director compensation policy approved by our stockholders in 2004, our non-employee directors were collectively entitled to receive a maximum of A$250,000 (approximately $247,500 based on a conversion rate of AUD1 to $0.99) in cash compensation for their service on our board of directors during the year ended June 30, 2011. Our board of directors had the authority to allocate up to the maximum aggregate compensation among the directors in its discretion. For the year ended June 30, 2011, our board of directors paid each of our directors other than our Chairman and our directors affiliated with venture capital funds A$50,000 in equally quarterly installments. Our Chairman was paid A$100,000 annually in equal quarterly installments. We historically have not provided compensation to our directors affiliated with venture capital funds in connection with their service on our board. Our board may grant directors stock options or equity awards from time to time, but we do not have a policy of regularly granting of equity or equity-based awards to our directors. All equity compensation awarded to our directors requires approval by our stockholders pursuant to the ASX Listing Rules.

As of June 30, 2011, each director listed in the table above held options to purchase up to the aggregate number of shares of common stock indicated below. Messrs. Brennan and Buckman did not hold any outstanding equity awards as of June 30, 2011.

- Dr. Brooke — 97,000 shares, all of which were vested;
- Mr. Callinan — 2,000,000 shares, 148,556 shares of which were unvested;
- Mr. Marsh — 1,106,665 shares, all of which were vested; and
- Mr. O'Dwyer — 97,000 shares, all of which were vested.

In August 2011, in accordance with the ASX Listing Rules, our stockholders approved an increase to the maximum aggregate cash amount payable to our directors to $500,000 per fiscal year. We do not plan to change the method by which we compensate our directors described above.

ITEM 6 — EXECUTIVE COMPENSATION

Summary Compensation Table

The following table sets forth certain information regarding compensation for the year ended June 30, 2011, provided to our Chief Executive Officer and the two other most highly compensated executive officers who received remuneration exceeding $100,000 during the year ended June 30, 2011, who we refer to as our named executive officers.

Name and Principal Position	Year	Salary ($)	Option Awards ($)(2)	Non-Equity Incentive Plan Compensation ($)	Total ($)
David Rosa *Chief Executive Officer*	2011	280,000	47,146	70,000	397,146
William Peters, MD *Chief Medical Officer*	2011	275,433(1)	—	—	275,433(1)
Debra Kridner *Vice President, Clinical Research and Regulatory Affairs*	2011	211,575	—	22,500	234,075

(1) Amounts paid have been converted from Australian Dollars to U.S. Dollars using a conversion rate of AUD1.00 to $0.99, using the average daily bid rates during the period.
(2) Represents the grant date fair value of the awards granted during the period computed in accordance with FASB ASC Topic 718. For a discussion of the relevant assumptions used to determine the valuation of our option awards for accounting purposes please refer to Note 3 to the Notes to Consolidated Financial Statements filed with this registration statement.

We have an employment agreement with David Rosa, our Chief Executive Officer, which provides we will pay him an annual salary of $250,000, subject annual review by our board of directors. The agreement also provides

that Mr. Rosa will be eligible to participate in our short-term incentive bonus scheme with a maximum of up to 25% of his annual salary. The amount of the bonus is determined by our board of directors based on goals agreed upon by Mr. Rosa and our board. Mr. Rosa's goals for the year ended June 30, 2011 related to development projects, relocation of our headquarters to Eden Prairie, Minnesota, development of a minimally invasive procedure to implant our product, and staff development. Our board determined that Mr. Rosa achieved all of these goals and awarded him the maximum cash incentive payment provided in his employment agreement for the year. Mr. Rosa also is entitled to participate in the benefit plans available to our employees generally. The agreement is terminable (i) by either party for any reason with one month's notice, by mutual agreement of the Company and Mr. Rosa; (ii) by mutual agreement between us and Mr. Rosa; (iii) immediately by us for "cause" (as defined in the agreement) if Mr. Rosa has not cured the conduct giving rise to a termination for "cause"; (iv) by us for Mr. Rosa's disability (as defined in the agreement); or (v) immediately by Mr. Rosa for "good reason" (as defined in the agreement) if we have not cured the conduct giving rise to a termination for "good reason." The agreement also provides that, for one year following his termination, Mr. Rosa will not compete with us during the term of his employment with us and he will not solicit any person who was one of our employees during the term of his employment.

Ms. Kridner's non-equity incentive plan compensation award for the year ended June 30, 2011 provided for a payment of up to 20% of her annual salary, based on goals agreed upon by Ms. Kridner and our Chief Executive Officer. Ms. Kridner's goals were tied to completion of enrollment of our feasibility trial, obtaining CE Mark approval, and preparation for our pivotal trial. While we completed enrollment of our feasibility trial and began preparations for our pivotal trial, we are still seeking to obtain CE Mark approval. As a result, our board awarded Ms. Kridner an incentive payment of $22,500 for the year, approximately half of the maximum amount she could have earned.

The following table sets forth certain information concerning equity awards held by our named executive officers that were outstanding as of June 30, 2011.

OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

Name	Option Awards

	Number of Securities Underlying Unexercisd Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)(1)	Option Expiration Date
David Rosa	5,000,000(2)	5,000,000	$ 0.049	11/29/20
William Peters, MD	797,881(3)	—	$ 0.0152	1/30/13
	776,000(3)	—	$ 0.0245	7/5/14
	440,000(3)	—	$ 0.176	11/1/16
	56,000(3)	—	$ 0.294	1/31/17
	600,000(3)	—	$ 0.294	4/18/17
	97,500(3)	—	$ 0.196	7/9/18
	675,165(4)	269,936	$ 0.078	8/20/18
Debra Kridner	—	—	n/a	n/a

(1) Amount converted from AUD to U.S. Dollars using a conversion rate of AUD1.00 to $0.98 U.S Dollar based upon bid rate on September 23, 2011.
(2) This option vested as to 50% of the shares on November 29, 2010, the date of grant, and 25% on November 1, 2011, and the remaining 25% will vest on November 1, 2012.
(3) Option fully vested as of June 30, 2011.
(4) This option vests as to 25% of the shares on the first anniversary of the date of grant, and 1/48 per month thereafter until fully vested.

Change in Control Agreements

We have entered into change in control agreements with each of our named executive officers that will require us to provide compensation to them in the event of a change in control of our company. Each agreement has a term that runs from its effective date through the later of (i) the five-year anniversary of the effective date or (ii) if a “change in control” occurs on or prior to the five-year anniversary, the one-year anniversary of the effective date

of the change in control. The agreements will be automatically extended for successive two-year periods until notice of non-renewal is given by either party at least 60 days prior to the end of the then-effective term.

Under the change in control agreements, “change in control” means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events: (i) subject to certain exceptions, any person or group’s acquisition, directly or indirectly, of more than 50% of the combined voting power of our outstanding securities other than by virtue of a merger, consolidation or similar transaction; (ii) the consummation of a merger, consolidation, or similar transaction involving our company and immediately after the consummation of such merger, consolidation or similar transaction, our stockholders immediately prior thereto do not directly own or beneficially own, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction; or (B) more than 50% of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their ownership of our outstanding voting securities immediately prior to such transaction; (iii) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of our company, other than a sale, lease, license or other disposition of all or substantially all of our consolidated assets to an entity, more than 50% of the combined voting power of the voting securities of which are owned by our stockholders in substantially the same proportions as their ownership of our outstanding voting securities immediately prior to such transaction; or (iv) individuals who, on March 17, 2011, were members of our board of directors cease to constitute at least a majority of the members of our board, provided that if the appointment, election or nomination for election of any new board member was approved or recommended by a majority of the members of the board as of March 17, 2011, the board member will be treated as being a board member as of March 17, 2011. Notwithstanding the foregoing, the term “change in control” will not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing our domicile.

Our change in control agreement with David Rosa, our Chief Executive Officer, provides that, if a change in control occurs during the term of his agreement and if Mr. Rosa’s employment terminates anytime during the one year period after the effective date of the change in control and if such termination is involuntary at our initiative without cause or is due to a voluntary resignation for good reason, we will (1) pay in a lump sum his salary for 18 months and any other earned but unpaid compensation; (2) pay in a lump sum an amount equal to the incentive bonus payment received by Mr. Rosa for the fiscal year immediately preceding the fiscal year in which the termination occurs; and (3) provide healthcare benefits to him and his family for the shorter of (i) 18 months after his termination; or (ii) until the date Mr. Rosa is and/or Mr. Rosa’s covered dependents are eligible to receive group medical and/or dental insurance coverage by a subsequent employer.

We have also entered into change in control agreements with each of our named executive officers other than Mr. Rosa, which provide that if a change in control occurs during the term of the officer’s agreement and if the officer’s employment terminates anytime during the one year period after the effective date of the change in control and if such termination is involuntary at our initiative without cause or is due to a voluntary resignation for good reason, we will (1) pay in a lump sum such officer’s salary for 12 months and any other earned but unpaid compensation; (2) pay in a lump sum an amount equal to the incentive bonus payment received by such officer for the fiscal year immediately preceding the fiscal year in which the termination occurs; and (3) provide healthcare benefits to such officer and such officer’s family for the shorter of (i) 12 months after the termination; or (ii) until the date the officer is and/or the officer’s covered dependents are eligible to receive group medical and/or dental insurance coverage by a subsequent employer.

Additionally, if any named executive officer terminates employment with us (i) during the term of the officer’s change in control agreement due to a voluntary resignation for good reason or due to an involuntary termination of an officer’s employment by us without cause prior to a change in control and the expiration of the agreement’s term (provided that the officer reasonably demonstrates that such termination arose in connection with or in anticipation of a change in control); (ii) a change in control occurs within 90 days after the officer’s termination; and (iii) a change in control occurs within 90 days after the termination and occurs during the term of the officer’s change in control agreement, then we will provide our named executive officers the applicable payments and health benefits described above.

Under the change in control agreements “cause” for termination exists upon the occurrence of any of the following events, if such event results in a demonstrably harmful impact on our business or reputation: (i) such officer’s commission of any felony or any crime involving fraud, dishonesty or moral turpitude; (ii) such officer’s attempted commission of, or participation in, a fraud or act of dishonesty against us; (iii) such officer’s intentional, material violation of any contract or agreement between us and such officer or of any statutory duty owed to us; (iv) such officer’s unauthorized use or disclosure of our confidential information or trade secrets; or (v) such officer’s gross misconduct.

Each named executive officer may tender resignation for “good reason” after any of the following are undertaken without such officer’s written consent: (i) a significant diminution in officer’s employment role with us as in effect immediately prior to the effective date of the change in control; (ii) a greater than 5% aggregate reduction by us in the officer’s annual base salary, as in effect on the effective date of the change in control or as increased thereafter unless the reduction is pursuant to an across-the-board proportionate salary reduction for all officers, management-level and other salaried employees due to our financial condition, a greater than 10% aggregate reduction by us of the officer’s annual base salary will be required for “good reason” to exist; (iii) any failure by us to continue in effect any benefit plan or program, including fringe benefits, incentive plans and plans with respect to the receipt of our securities, in which the officer is participating immediately prior to the effective date of the change in control, or any action by us that would adversely affect the officer’s participation in or reduce his benefits under those benefit plans unless we offer a range of benefit plans and programs that, taken as a whole, is comparable to the benefit plans in effect in which the officer is participating immediately prior to the change in control; or (iv) a non-temporary relocation of the officer’s business office to a location more than 50 miles from the location at which the officer performs duties as of the effective date of the change in control, except for required travel by officer on our business to an extent substantially consistent with the officer’s business travel obligations prior to the change in control.

In addition to the payments described above, the change in control agreements with the named executive officers provide that if a change in control occurs while such officer is actively employed by us, such change in control will cause the immediate acceleration of the vesting of 100% of any unvested portion of any stock option awards held by the officer on the effective date of such change in control.

We will not make any of the payments described above unless: (i) the named executive officer signs a full release of any and all claims in favor of us; (ii) all applicable consideration periods and rescission periods have expired; and (iii) as of the dates we provide any payments to the named executive officer, the officer is in strict compliance with the terms of the applicable change in control agreement and any proprietary information agreement the officer has entered into with us.

Compensation Committee Interlocks and Insider Participation

The board members who serve on our Remuneration and Nomination Committee are Dr. Geoffrey Brooke and Paul Buckman. During the year ended June 30, 2011, no person who served as a member of our Remuneration and Nomination Committee was, during such period, an officer or employee of our company, or has ever been one of our officers, and no such person had any transaction with us required to be disclosed in “Item 7 — Certain Relationships and Related Transactions” below. During the year ended June 30, 2011, (i) none of our executive officers served as a member of the compensation committee of another entity, one of whose executive officers served on our Remuneration and Nomination Committee; (ii) none of our executive officers served as a director of another entity, one of whose executive officers served on our Remuneration and Nomination Committee; and (iii) none of our executive officers served as a member of the compensation committee of another entity, one of whose executive officers served as one of our directors.

ITEM 7 — CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Director Independence

Our board of directors currently consists of eight directors. Our board of directors has determined that six of our eight directors are independent directors, as defined under the applicable rules of the Nasdaq Capital Market.

The independent directors are Dr. Geoffrey Brooke, Paul Buckman, Nicholas Callinan, Dr. Mark Harvey, Donal O’Dwyer, and Gregory Waller.

We are also subject to the corporate governance requirements of the ASX, which include guidelines for the determination of whether a director should be considered independent. Under these guidelines, in order for a director to be independent, the board should consider, among other things, whether the director is a “substantial shareholder” or an officer of, or otherwise directly associated with, a “substantial shareholder”. The holdings of a shareholder are typically considered substantial if they exceed 5% of the voting securities. As a result, Dr. Geoffrey Brooke and Dr. Mark Harvey may not be considered independent for ASX purposes. However, our board has determined that these directors are independent notwithstanding their association with certain stockholders.

Related Party Transactions

Since July 1, 2008, we have entered into the following transactions with our directors, executive officers, holders of more than five percent of our voting securities, and affiliates of our directors, executive officers and five percent stockholders:

In September 2011, we sold 2,875,000 shares of our common stock to Jeffrey Mathiesen, our Chief Financial Officer, at the price of A$0.04 per share as part of a private placement.

In August, 2011, we entered into indemnification agreements with each of our directors and executive officers that provide, in general, that we will indemnify them to the fullest extent permitted by law in connection with their service to us or on our behalf.

We are party to an agreement with WSP Trading Limited pursuant to which WSP Trading Limited performs technical and medical advisory services for us and we pay WSP A$278,400 annually. Dr. William Peters is a director of both our company and WSP Trading Limited.

ITEM 8 — LEGAL PROCEEDINGS

We are not party to any material pending legal proceedings.

ITEM 9 — MARKET PRICE OF AND DIVIDENDS ON THE COMPANY'S COMMON STOCK AND RELATED STOCKHOLDER MATTERS

Market Information

Since September 2004, our shares of common stock have traded on the ASX in the form of CDIs under the symbol "SHC."

The following table sets forth, for the periods indicated, the high and low closing prices for our CDIs as reported on the ASX, in Australian dollars and as converted into United States dollars. All currency conversions are based on the prevailing Australian dollar to the U.S. Dollar rate on the last day of each respective quarter.

Period	High (A$)	Low (A$)	High (US$)	Low (US$)
Year Ending December 31, 2011:				
First Quarter	0.045	0.030	0.047	0.031
Second Quarter	0.063	0.039	0.068	0.042
Third Quarter (through September 26, 2011)	0.055	0.035	0.054	0.034
Year Ended December 31, 2010:				
First Quarter	0.041	0.031	0.040	0.030
Second Quarter	0.037	0.029	0.031	0.024
Third Quarter	0.023	0.036	0.022	0.035
Fourth Quarter	0.023	0.039	0.024	0.040
Year Ended December 31, 2009:				
First Quarter	0.059	0.032	0.041	0.022
Second Quarter	0.068	0.042	0.055	0.034
Third Quarter	0.102	0.042	0.090	0.037
Fourth Quarter	0.052	0.033	0.047	0.030

As of September 26, 2011, we had 1,203,747,934 shares of common stock issued and outstanding, and there was one holder of record of our common stock, which was Chess Depositary Nominees, or CDN. CDN held shares of our common stock on behalf of approximately 1,190 CDI holders. As of September 26, 2011, there were outstanding options to purchase 330,805,739 shares of our common stock and warrants to purchase 60,624,227 shares of our common stock.

After this registration statement becomes effective, we intend to file with the SEC registration statements on Form S-8 covering approximately 176 million shares of our common stock.

We have not registered any of our outstanding shares of common stock under U.S. federal or state securities laws and all of our outstanding shares are restricted securities for purposes of Rule 144 under the Securities Act. As of September 29, 2011, 235,634,277 shares of our common stock could be sold by our existing stockholders without restrictions under U.S. federal securities laws pursuant to Rule 144. In addition, beginning 90 days after the effective date of this registration statement, under Rule 144 as in effect on the date this registration statement is filed with the SEC, a person who is not one of our affiliates at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock for at least six months, would be entitled to sell an unlimited number of shares of our common stock provided current public information about us is available and, after owning such shares for at least one year, would be entitled to sell an unlimited number of shares of our common stock without restriction. Beginning 90 days after the date of this effective date of this registration statement, under Rule 144 as in effect on the date this registration statement is filed with the SEC, our affiliates who have beneficially owned shares of our common stock for at least six months would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- one percent of the number of shares of our common stock then outstanding; and
- the average weekly trading volume of our common stock on all national securities exchanges and/or reported through the automated quotation system of a registered securities exchange during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale, or if no such notice is required, the date of receipt of the order to execute the sale.

Sales under Rule 144 by our affiliates are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

We cannot estimate the number of shares of our common stock that our existing stockholders will elect to sell under Rule 144.

We have submitted a listing application to the Nasdaq Capital Market for listing of our common stock. There can be no assurance that the listing application will be approved or that a U.S. trading market for our common stock will develop.

Dividends

We currently intend to retain any earnings to finance research and development and the operation and expansion of our business and do not anticipate paying any cash dividends for the foreseeable future. The declaration and payment of any dividends in the future by us will be subject to the sole discretion of our board of directors and will depend upon many factors, including our financial condition, earnings, capital requirements of our operating subsidiaries, covenants associated with any debt obligations, legal requirements, regulatory constraints and other factors deemed relevant by our board of directors. Moreover, if we determine to pay any dividend in the future, there can be no assurance that we will continue to pay such dividends.

Equity Compensation Plan Information

The following table provides information as of June 30, 2011 with respect to our equity compensation plans. See Note 3 to our consolidated financial statements included elsewhere is this registration statement for further information.

Plan Category	**Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (a)**		**Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (b)**	**Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (c)**
Equity compensation plans approved by security holders	24,125,719	$	0.013	—
Equity compensation plans not approved by security holders	—		n/a	152,000,000
Total	24,125,719		n/a	152,000,000

As of June 30, 2011, the maximum number of shares of our common stock that could be granted under our Amended and Restated 2002 Stock Plan, which we refer to as our 2002 Plan, was 12,037,306. As of that date, we had issued or had outstanding options to purchase 24,125,719 shares of our common stock under the 2002 Plan. A copy of the 2002 Plan is included as Exhibit 10.2 to this registration statement. Each outstanding option in excess of the authorized shares under the 2002 Plan incorporates by reference the terms of the 2002 Plan. In September 2011, our board amended the 2002 Plan to increase the number of shares issuable thereunder to 25,000,000. This amendment is subject to stockholder approval, which we intend to seek at a meeting of our stockholders in November 2011.

In August 2011, our stockholders approved our 2011 Equity Incentive Plan, which we refer to as the 2011 Plan. A copy of the 2011 Plan is included as Exhibit 10.4 of this registration statement. The 2011 Plan became effective in March 2011 when it was adopted by our board of directors, but no award under the 2011 Plan could be exercised (or, in the case of a restricted stock award, restricted stock unit award, or other award of stock, no such award could be granted) unless and until the 2011 Plan was approved by our stockholders. Below is a description of the material features of the 2011 Plan.

General

The 2011 Plan continues for a term of 10 years from March 2011, the time which the plan was adopted by our board, unless our board terminates the plan prior to such time.

Share Reserve

Subject to the provisions of the plan and applicable stock exchange rules, the aggregate number of shares that may be issued under the 2011 Plan is a total of 152,000,000 million shares plus the number of any shares underlying outstanding stock awards granted under the 2002 Plan that expire or terminate for any reason prior to exercise or settlement or are forfeited because of the failure to meet a contingency or condition required to vest such shares. The aggregate maximum number of shares of common stock that may be issued pursuant to the exercise of incentive stock options is 300,000,000 shares. The maximum number of shares that may be granted to any participant in a calendar year attributable to performance stock awards must not exceed 37,500,000 shares of common stock.

If an award expires or otherwise terminates without all of the shares covered by such award having been issued, or if the award is settled in cash, such expiration, termination or settlement will not reduce (or otherwise offset) the number of shares that may be available for issue under the 2011 Plan. Similarly, if any shares issued pursuant to an award are forfeited back to our company because of the failure to meet a contingency or condition required to vest such shares in the participant, then the shares that are forfeited will revert to and again become available for issue under the 2011 Plan.

Administration

The 2011 Plan is administered by our board, which may delegate some or all of the administration of the 2011 Plan to a committee or committees. Subject to the terms of the plan, the board has the authority to, among other things, determine which of the persons eligible under the plan will be granted awards, determine when and how each award will be granted, determine the number and type of stock awards to be granted, determine the provisions of each award granted, accelerate the time of exercisability and vesting of awards, suspend or terminate the plan at any time, and subject to any necessary stockholder approval, amend the plan as it deems necessary or advisable.

To the extent permitted by law, our board may also determine that the delivery of shares or the payment of cash upon the exercise, vesting or settlement of an award may be deferred.

Eligibility

Our employees, directors, and certain consultants are eligible to receive awards under the 2011 Plan. However, incentive stock options may be granted only to our employees. Further, no incentive stock option may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our company's total combined voting power or that of any affiliate unless the following conditions are satisfied: (i) the option exercise price must be at least 110% of the fair market value of the stock subject to the option on the date of grant; and (ii) the term of any incentive stock option award must not exceed five years from the date of grant.

Awards

Pursuant to the 2011 Plan, we may grant an eligible person incentive stock options, stock appreciation rights, performance stock awards, performance cash awards, and other stock awards. Other than as expressly set out in the 2011 Plan or as permitted under applicable stock exchange rules, a stock award does not give a participant any right to vote, receive dividends or participate in any new issue of shares. A stock award does not grant a participant any other rights as a stockholder of our company until such time as the participant has satisfied all requirements for the exercise of the award and (if applicable) the issuance of shares subject to the award has been entered into the books and records of our company. Unless otherwise provided in the stock award agreement, if our company is dissolved or liquidated, all outstanding stock awards (except those consisting of vested and outstanding shares not subject to a forfeiture condition or a right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares subject to our company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by our company. The Board may, however, cause some or all stock awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture before the dissolution or liquidation is completed, but contingent on its completion. The following is a summary of awards that can be granted under the 2011 Plan:

- *Stock Options.* Stock options permit the holder to purchase a specified number of shares of our common stock at a set price. Options granted under the plan may be either incentive or nonstatutory stock options. Subject to the provisions of the plan, the term of each option granted under the 2011 Plan will be exercisable for a period of 10 years from the date of grant or such shorter period as specified in the award agreement. If the option is not exercised within the specified period, the option will terminate. The exercise price of options granted under the 2011 Plan may be no less than 100% of the fair market value of the shares subject to the option on the date the option is granted, unless an option is granted pursuant to an

assumption of or substitution for another option pursuant to a corporate transaction. The total number of shares subject to an option may vest and become exercisable in periodic instalments. If the aggregate fair market value (as determined at the time of grant) of shares with respect to which incentive stock options are exercisable for the first time by any optionholder during any calendar year exceeds $100,000, the options that exceed such limit will be treated as nonstatutory stock options. Our board may further determine the terms and conditions of options granted under the plan, including the exercise price and vesting and exercisability terms.

- *SARS.* Stock appreciation rights, or SARs, provide for payment to the holder for all or a portion of the excess of the fair market value of a specified number of shares of our common stock on the date of exercise over a specified exercise price. Subject to the provisions of the plan, the term of each SAR granted under the 2011 Plan will be exercisable for a period of 10 years from the date of grant or such shorter period as specified in the award agreement. If the SAR is not exercised within the specified period, the SAR will terminate. The exercise price of each SAR may be no less than 100% of the fair market value of the shares subject to SAR on the date SAR is granted, unless an option is granted pursuant to an assumption of or substitution for another SAR pursuant to a corporate transaction. The total number of shares subject to a SAR may vest and become exercisable in periodic instalments. The SARs may be subject to other terms and conditions on the time or times when it may be exercised as deemed appropriate by our board.

- *Performance Awards.* Performance awards under the 2011 Plan may be performance stock awards or performance cash awards. A performance stock award is a stock award that may vest or may be exercised contingent upon the attainment of certain goals during a performance period and may require the completion of a specified period of continuous service as determined by our board. A performance cash award is a cash award, the payment of which may be contingent upon the attainment of certain performance goals during a performance period, and may also require the completion of a specified period of continuous service as determined by our board. Our board may specify the form of payment of a performance cash award, which may be cash or other property.

- *Other.* Other forms of stock awards valued in whole or in part with reference to shares may be granted under the 2011 Plan at the sole discretion of our board.

Transferability

Our board may impose restrictions on the transferability of options and SARs. Otherwise, an option or SAR may be transferred only by will or pursuant to a domestic relations order. In any event, however, an optionholder may designate a beneficiary who may exercise the option following the optionholder's death.

Termination of Service

Unless otherwise provided in a participant's award or other agreement, upon termination of an award recipient's service for cause with our company, all options or SAR will terminate on the date of such participant's termination of continuous service and the participant will be prohibited from exercising his or her option or SAR from and after the time of such termination. If an award recipient's service with our company terminates other than for cause or upon the participant's death or disability, then the participant may exercise his or her option or SAR, to the extent he or she was entitled to exercise such award as of the date of termination, by no later than the earlier of three months following the date of termination of service or the expiration of the term of option or SAR. If an award recipient's service with our company terminates as a result of the participant's disability, then the participant may exercise his or her option or SAR, to the extent he or she was entitled to exercise such award as of the date of termination, by no later than the earlier of the date 12 months following such termination or the expiration of the term of the option or SAR. If an award recipient's service with our company terminates as a result of the participant's death, then the option or SAR may be exercised to the extent the participant was entitled to exercise such award as of the date of death by the participant's designated beneficiary or representative. The option or SAR must be exercised by no later than the earlier of 18 months following the date of death or the expiration of the term of the option or SAR.

Change in Control; Corporate Transaction

In the event of a change in control, disposition of all or substantially all of our assets, consummation of a disposition of at least 90% of our outstanding securities or consummation of a merger, consolidation or similar transaction following which we are not the surviving corporation or we are the surviving corporation but our shares of common stock are converted or exchanged into other property, a stock award will be subject to additional acceleration of vesting and exercisability as provided in the relevant stock award agreement or provided in any other written agreement between our company or any affiliate and the participant. In the absence of such a provision, no acceleration of vesting or exercisability will occur. In the event of such a corporate transaction, unless otherwise provided by our board or otherwise specified in the agreement evidencing the award, our board must take one or more of the following actions with respect to a stock award, contingent upon the closing or completion of the contemplated transaction, including: arrange for the acquiring corporation to assume or continue the stock award (or substitute a similar stock award), arrange for the assignment of any reacquisition or repurchase rights held by our company in respect of shares issued pursuant to the stock award to the acquiring corporation, accelerate the vesting of the stock award to a date prior to the effective time of such corporate transaction as determined by our board, arrange for a lapse of any reacquisition or repurchase rights held by our company with respect to the stock award, cancel or arrange for the cancellation of the stock award to the extent not vested or exercised prior to the

effective time of the corporate transaction, or make a payment, in such form as determined by our board, equal to the excess (if any) of the value of the property the participant would have received on the exercise of the stock award over any exercise price payable by such holder in connection with such exercise.

Adjustment of Awards

In the event that there is a specified type of change in our company’s capital structure not involving the receipt of consideration by our company, such as a stock split or stock dividend, the number of shares reserved under the 2011 Plan and the number of shares and exercise price or strike price, if applicable, of all outstanding stock awards will be appropriately adjusted by our board.

Amendment and Termination

Our board has the authority to amend or terminate the 2011 Plan. No amendment or termination of the 2011 Plan will adversely affect any rights under awards already granted to a participant under the 2011 Plan unless agreed to by the affected participant. Our Board will obtain stockholder approval of any amendment to the 2011 Plan as required by applicable law or stock exchange requirements. Suspension or termination of the 2011 Plan will not impair the rights and obligations of any award granted while the 2011 Plan is in effect, except with the written consent of the affected participant.

ITEM 10 — RECENT SALES OF UNREGISTERED SECURITIES

In the three years preceding the filing of this registration statement, we issued the securities indicated below that were not registered under the Securities Act.

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Institutional and high net worth Australian investors	Common Stock	245,358,998	Aug.-Sept. 2009	N/A	A$9,810,200
Institutional and high net worth Australian investors	Common Stock upon exercise of options	1,994,923	12/3/09	$A0.017 per share purchase price for Common Stock	A$34,019
Accredited Investors party to Securities Purchase Agreement dated 9/15/10	Common Stock and Warrants to purchase Common Stock	133,420,518 Common Shares 66,710,259 Warrants	11/15/10	A$0.028 per share purchase price for Common Stock A$0.032 per share exercise price for Warrants	A$3,735,774
Summer Street Research Partners	Warrants to purchase Common Stock	3,994,760 Warrants	11/13/10	A$0.028	N/A

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Matthew Dormer	Warrants to Purchase Common Stock	704,958 Warrants	11/13/10	A$0.028	N/A
Institutional and high net worth Australian investors	Common Stock	340,294,600 Common Shares 170,147,300 Warrants	12/8/10	 A$0.028	A$9,528,249
Institutional and high net worth	Common Stock	3,571,429	1/25/11	N/A	A$100,000

Australian investors		Common Shares			
Institutional and high net worth Australian investors	Common Stock	23,716 Common Shares	1/25/11	N/A	A$759
Institutional and high net worth Australian investors	Common Stock	27,840 Common Shares	2/22/11	N/A	A$891

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Institutional and high net worth Australian investors	Common Stock	1,379,921 Common Shares	5/9/11	N/A	A$44,157
Institutional and high net worth Australian investors	Common Stock	1,000,000 Common Shares	5/23/11	N/A	A$32,000
Institutional and high net worth Australian investors	Common Stock	10,536 Common Shares	6/6/11	N/A	A$335
Malcolm Legget	Common Stock	38,800 Common Shares	6/22/11	N/A	A$586
Accredited Investors party to Securities Purchase Agreement dated 9/15/10	Common Stock and Warrants to purchase Common Stock	114,444,346 Common Shares 34,333,306 Warrants	7/27/11	A$0.04 per share purchase price for Common Stock A$0.056 per share exercise price for Warrants	A$4,577,774

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Summer Street Research Partners	Warrants to purchase Common Stock	1,818,052 Warrants	7/27/11	A$0.04	N/A
Institutional and high net worth Australian investors	Common Stock and Warrants to purchase Common Stock	30,806,000 Common Shares 9,241,800 Warrants	9/9/11	A$0.04 per share purchase price for Common Stock A$0.056 per share exercise price for Warrants	A$1,232,240
Accredited Investors party to Securities Purchase Agreement dated 9/15/10	Common Stock and Warrants to purchase Common Stock	25,000,000 Common Shares 7,500,000 Warrants	9/13/11	A$0.04 per share purchase price for Common Stock A$0.056 per share exercise price for Warrants	A$1,000,000

Name or Class of Person to Whom Sold	Type of Securities	Amount of Securities	Date of Sale	Exercise Price per Share	Aggregate Offering Consideration
Accredited Investors party to Securities Purchase Agreement dated 9/15/10	Common Stock and Warrants to purchase Common Stock	14,082,730 Common Shares 4,224,819 Warrants	9/16/11	A$0.04 per share purchase price for Common Stock A$0.056 per share exercise price for	A$563,309

				Warrants	
Summer Street Research Partners	Warrants to Purchase Common Stock	306,250 Warrants	9/16/11	A$0.04	N/A

Shares of our common stock indicated in the table above were issued in the form of CDIs.

No underwriters were used in connection with the transactions described above. Summer Street Research Partners and Matthew Dormer were the placement agents for the November 15, 2010 and July 27, 2011 transactions. The securities issued to the placement agents were made in reliance upon Section 4(2) of the Securities Act because no public offering of the securities was made and the placement agents are sophisticated persons with adequate information about us and the securities were not acquired with a view to any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in such sales. All other sales other than to the placement agents were for cash.

The transactions described above that occurred on November 15, 2010, July 27, 2011, September 13, 2011 and September 16, 2011 were made in reliance upon the exemption from registration requirements of the Securities Act available under Section 4(2) of the Securities Act and Rule 506 of Regulation D. The purchasers of the securities in these transactions made in reliance upon Section 4(2) of the Securities Act and Rule 506 of Regulation D represented that they were sophisticated persons and that they intended to acquire the securities for investment only and not with a view to, or for sale in connection with, any distribution thereof, and appropriate legends were affixed to the share certificates and instruments issued in such sales. We believe that these purchasers either received adequate information about us or had adequate access, through their relationships with us, to such information.

The transactions described above that occurred during August and September 2009 and on each of December 3, 2009, December 8, 2010, January 25, 2010, February 22, 2011, May 9, 2011, May 23, 2011, June 6, 2011, June 22, 2011 and September 9, 2011 were made in reliance upon the exemption from registration requirements of the Securities Act available under Rule 903 of Regulation S. The purchasers of the securities in these transactions represented that they were outside of the United States when each such person originated its buy order for the securities, no offers were made to persons in the United States, the Company implemented the offering restrictions required by Regulation S, the purchasers agreed offer or sell the securities acquired only in compliance with the restrictions and conditions imposed by Regulation S during the applicable distribution compliance period and we agreed to refuse to register any transfer of the securities not made in accordance with Regulation S, pursuant to registration under the Securities Act, or pursuant to an available exemption from registration.

All other sales of common stock described above were made pursuant to the exercise of stock options granted under the 2002 Plan to our officers, directors, employees and consultants in reliance upon an available exemption from the registration requirements of the Securities Act, including those contained in Rule 701 promulgated under Section 3(b) of the Securities Act. Among other things, we relied on the fact that, under Rule 701, companies that are not subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act are exempt from registration under the Securities Act with respect to certain offers and sales of securities pursuant to “compensatory benefit plans” as defined under that rule. We believe that the 2002 Plan qualifies as a “compensatory benefit plan” under Rule 701.

The following table sets forth information on the stock options issued by us to our officers, directors, employees and consultants during the three years preceding the filing of this registration statement.

Date of Issuance	Number of Options Granted	Exercise Price per Share
11/29/10	10,000,000	A$0.05
08/18/11	116,118,000	A$0.035
8/18/11	2,337,000	A$0.048
8/18/11	3,000,000	A$0.052
08/19/11	5,842,000	A$0.064

No consideration was paid to us by any recipient of any of the foregoing options for the grant of such options. All of the stock options described above were granted under the 2002 Plan or our 2011 Plan to our officers, directors, employees and consultants in reliance upon an available exemption from the registration requirements of the Securities Act, including those contained in Rule 701 promulgated under Section 3(b) of the Securities Act. Among other things, we relied on the fact that, under Rule 701, companies that are not subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act are exempt from registration under the Securities Act with respect to certain offers and sales of securities pursuant to “compensatory benefit plans” as defined under that rule. We believe that our 2001 Stock Option Plan and our 2011 Plan qualify as a compensatory benefit plans.

ITEM 11 — DESCRIPTION OF SECURITIES TO BE REGISTERED

General

The following description of our capital stock is a summary only and is qualified in its entirety by reference to our certificate of incorporation, as amended, and amended and restated bylaws, which are included as Exhibits 3.1 and 3.2 of this registration statement.

As of September 26, 2011, we had outstanding 1,203,747,934 shares of our common stock held by one holder of record, which was CDN. CDN held shares of our common stock on behalf of approximately 1,190 CDI holders. As of September 26, 2011, we also had outstanding options to acquire 330,805,739 shares of common stock held by employees, directors and consultants and warrants to purchase 60,624,227 shares of common stock.

Common Stock

We are authorized to issue up to 196,000,000 shares of common stock, with a par value of $0.0001 per share.

Holders of our common stock are entitled to receive dividends when and as declared by our board of directors out of funds legally available.

Holders of our common stock are entitled to one vote for each share on each matter properly submitted to our stockholders for their vote; provided however, that except as otherwise required by law, holders of our common stock will not be entitled to vote on any amendment to our certificate of incorporation (including any certificate of designation filed with respect to any series of preferred stock) that relates solely to the terms of a series of outstanding preferred stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to our certificate of incorporation (including any certificate of designation filed with respect to any series of preferred stock).

Subject to the voting restrictions described above, holders of our common stock may adopt, amend or repeal our bylaws and/or alter certain provisions of our certificate of incorporation with the affirmative vote of the stockholders of at least 66 $^{2}/_{3}$% of the voting power of all of the then-outstanding shares of our capital stock entitled to vote generally in the election of directors, voting together as a single class, in addition to any vote of the holders of a class or series of our stock required by law or our certificate of incorporation. The provisions of our certificate of incorporation that may be altered only by the super-majority vote described above relate to:

- the number of directors on our board of directors, the classification of our board of directors and the term of the members of our board of directors;

- the limitations on removal of any of our directors described below under "—Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws";

- the ability of our directors to fill any vacancy on our board of directors by the affirmative vote of a majority of the directors then in office under certain circumstances;

- the ability of our board of directors to adopt, amend or repeal our bylaws and the super-majority vote of our stockholders required to adopt, amend or repeal our bylaws described above;

- the limitation on action of our stockholders by written action described below under "—Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws";

- the choice of forum provision described below under "—Choice of Forum";

- the limitations on director liability and indemnification described below under the heading "Item 12. Indemnification of Directors and Officers"; and

- the super-majority voting requirement to amend our certificate of incorporation described above.

Holders of our common stock do not have any conversion, redemption or preemptive rights pursuant to our organizational documents. In the event of our dissolution, liquidation or winding up, holders of our common stock are entitled to share ratably in any assets remaining after the satisfaction in full of the prior rights of creditors and the aggregate of any liquidation preference pursuant to the terms of any certificate of designation filed with respect to any series of preferred stock. The rights, preferences, and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate and issue in the future.

All outstanding shares of our common stock are fully paid and non-assessable.

Preferred Stock

We are authorized to issue up to 40,000,000 shares of preferred stock, with a par value of $0.0001 per share. We may issue any class of preferred stock in any series. Our board of directors has the authority to establish and designate series, and to fix the number of shares included in each such series and to determine or alter for each such series, such voting powers, designation, preferences, and relative participating, optional, or other rights and such qualifications, limitations or restrictions thereof. Our board of directors is not restricted in repurchasing or redeeming such stock while there is any arrearage in the payment of dividends or sinking fund installments. Our board of directors is authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. The number of authorized shares of preferred stock may be increased or decreased, but not below the number of shares thereof then outstanding, by the affirmative vote of the holders of a majority of the common stock, without a vote of the holders of the preferred stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of preferred stock.

CDIs

In order for our shares of common stock in the form of CDIs to trade electronically on the ASX, we participate in the electronic transfer system known as the Clearing House Electronic Subregister System, or CHESS, operated by ASX Settlement and Transfer Corporation Pty Limited, or ASTC. ASTC provides settlement services for ASX markets to assist participants and issuers to understand the operation of the rules and procedures governing settlement facilities. The ASX Settlement Operating Rules form part of the overall listing and market rules which we are required to comply with as an entity listed on ASX.

CHESS is an electronic system which manages the settlement of transactions executed on ASX and facilitates the paperless transfer of legal title to ASX quoted securities. CHESS cannot be used directly for the transfer of securities of companies domiciled in certain jurisdictions outside of Australia, such as the United States. Accordingly, to enable our shares of common stock to be cleared and settled electronically through CHESS, we have issued and will continue to issue depositary interests called CDIs.

CDIs confer the beneficial ownership in the shares of common stock on the CDI holder, with the legal title to such shares held by CDN, a subsidiary of ASX, to act as our Australian depositary and issue CDIs.

A holder of CDIs who does not wish to have their trades settled in CDIs may request that their CDIs be converted into shares of common stock, in which case legal title to the shares of common stock will be transferred to the holder of CDIs and stock certificates representing the shares of common stock will be issued.

Anti-Takeover Effects of Certain Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws

Certificate of Incorporation and Bylaws

Certain provisions of our certificate of incorporation and bylaws may be considered as having an anti-takeover effect, such as those provisions:

- providing for our board of directors to be divided into three classes with staggered three-year terms, with only one class of directors being elected at each annual meeting of our stockholders and the other classes continuing for the remainder of their respective three-year terms;
- authorizing our board of directors to issue from time to time any series of preferred stock and fix the voting powers, designation, powers, preferences and rights of the shares of such series of preferred stock;
- prohibiting stockholders from acting by written consent in lieu of a meeting;
- requiring advance notice of stockholder intention to put forth director nominees or bring up other business at a stockholders’ meeting;
- prohibiting stockholders from calling a special meeting of stockholders;
- requiring a 66 $^{2}/_{3}$% super-majority stockholder approval in order for stockholders to alter, amend or repeal certain provisions of our certificate of incorporation;

- requiring a 66 $^{2}/_{3}$% super-majority stockholder approval in order for stockholders to adopt, amend or repeal our bylaws;
- providing that, subject to the rights of the holders of any series of preferred stock to elect additional directors under specified circumstances, neither the board of directors nor any individual director may be removed without cause;
- creating the possibility that our board of directors could prevent a coercive takeover of the Company due to the significant amount of authorized, but unissued shares of our common stock and preferred stock;
- providing that, subject to the rights of the holders of any series of preferred stock, the number of directors shall be fixed from time to time exclusively by our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors; and
- providing that any vacancies on our board of directors under certain circumstances will be filled only by a majority of our board of directors then in office, even less than a quorum, and not by the stockholders.

Delaware Law

We are also subject to Section 203 of the Delaware General Corporation Law, which in general prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years following the date that the stockholder became an interested stockholder, unless:

- prior to that date, our board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of our voting stock outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to that date, the business combination is approved by our board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 $^{2}/_{3}$% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines an interested stockholder as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by any of these entities or persons.

The above-summarized provisions of the Delaware General Corporation Law and our certificate of incorporation and bylaws could make it more difficult to acquire us by means of a tender offer, a proxy contest or otherwise, or to remove incumbent officers and directors. These provisions are expected to discourage certain types of coercive takeover practices and takeover bids that our board of directors may consider inadequate and to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of increased protection of our ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging takeover or acquisition proposals because, among other things, negotiation of these proposals could result in an improvement of their terms.

Preemptive Right Pursuant to Securities Purchase Agreement

Pursuant to a securities purchase agreement, dated July 21, 2011, between us and the purchasers party thereto, the purchasers have a preemptive right to purchase equity or equity-based securities we offer after the date of the agreement through July 25, 2012. Prior to our offering any equity or equity-based securities during this time, or within 30 days after the closing of any sale of such securities, we must offer to issue to the purchasers, on the terms we are offering the securities to third parties, an aggregate of 25% of the securities we are offering. The number of offered securities which each purchaser will have a right to subscribe for will be based on the purchaser's pro rata portion of the aggregate number of common shares purchased under the securities purchase agreement by all purchasers party thereto. If a purchaser fails to purchase its pro rata share of the securities subject to the preemptive right, then such holder will no longer have preemptive rights pursuant to the securities purchase agreement for any subsequent placement of our securities. The preemptive right provided by the securities purchase agreement is subject to certain exceptions, including for securities issued pursuant to convertible securities issued prior to the date of the securities purchase agreement, securities issued pursuant to certain commercial arrangements and securities issued under the 2002 Plan and the 2011 Plan.

Choice of Forum

Our certificate of incorporation provides that, unless we consent in writing otherwise, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for any (i) derivative action or proceeding brought on our behalf; (ii) action asserting a breach of fiduciary duty owed by any of our directors, officers or other employees or any of our stockholders; (iii) action asserting a claim pursuant to the Delaware General Corporation Law; or (iv) action asserting a claim that is governed by the internal affairs doctrine.

Listing

We have applied to list our common stock on the Nasdaq Capital Market under the symbol of "SSH". Our shares of common stock in the form of CDIs are listed on the ASX under the symbol "SHC".

Transfer Agent and Registrar

The transfer agent and registrar for our common stock and CDIs is Link Market Services Limited. The transfer agent's address is Level 12, 680 George Street, Sydney NSW 2000, Australia, and the telephone number is +61 2 8280 7111. If our application to list on the Nasdaq Capital Market is approved, we will appoint a transfer agent registered with the SEC.

ITEM 12 — INDEMNIFICATION OF DIRECTORS AND OFFICERS

Our certificate of incorporation limits the liability of our directors to the fullest extent permitted by Delaware law. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for any:

- breach of their duty of loyalty to us or our stockholders;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares as provided in Section 174 of the Delaware General Corporation Law; or
- transaction from which the directors derived an improper personal benefit.

These limitations of liability do not apply to liabilities arising under federal securities laws and do not affect the availability of equitable remedies such as injunctive relief or rescission.

Our bylaws provide that we will indemnify and advance expenses to our directors and officers to the fullest extent permitted by law or, if applicable, pursuant to indemnification agreements. They further provide that we may choose to indemnify our other employees or agents from time to time. Subject to certain exceptions and procedures,

our bylaws also require us to advance to any person who was or is a party, or is threatened to be made a party, to any proceeding by reason of the person's service as one of our directors or officers all expenses incurred by the person in connection with such proceeding.

Section 145(g) of the Delaware General Corporation Law and our bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in connection with their services to us, regardless of whether our bylaws permit indemnification. We maintain a directors' and officers' liability insurance policy.

We entered into indemnification agreements with each of our directors and executive officers that provide, in general, that we will indemnify them to the fullest extent permitted by law in connection with their service to us or on our behalf and, subject to certain exceptions and procedures, that we will advance to them all expenses that they incur in connection with any proceeding to which they are, or are threatened to be, a party.

At present, there is no pending litigation or proceeding involving any of our directors or officers as to which indemnification is required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

ITEM 13 — FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See our consolidated financial statements beginning on page F-1.

ITEM 14 — CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 15 — FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial Statements

See our consolidated financial statements beginning on page F-1.

(b) Exhibits

Refer to the Exhibit Index immediately following the signature page of this report, which is incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

SUNSHINE HEART, INC.

Date: September 30, 2011

By: /s/ Jeffrey Mathiesen
Name: Jeffrey Mathiesen
Title: Chief Financial Officer

EXHIBIT INDEX

Exhibit No.	Description
3.1	Certificate of Incorporation, as amended.
3.2	Amended and Restated Bylaws.
4.1	Specimen stock certificate.
10.1	Form of Indemnity Agreement between the registrant and each of its officers and directors.*
10.2	Sunshine Heart, Inc. Amended and Restated 2002 Stock Plan.*
10.3	Form of Notice of Stock Option Grant and Option Agreement for Amended and Restated 2002 Stock Plan.*
10.4	Sunshine Heart, Inc. 2011 Equity Incentive Plan.*
10.5	Form of Stock Option Grant Notice and Option Agreement for 2011 Equity Incentive Plan.*
10.6	Form of Senior Management Stock Option Grant Notice and Option Agreement for 2011 Equity Incentive Plan.*
10.7	Form of Change in Control Agreement for the Company's Chief Executive Officer, Chief Financial Officer, Chief Medical Officer, Vice President of Clinical Research and Regulatory Affairs and Vice President of Research and Development.*
10.8	Form of Warrant to Purchase Common Stock issued to investors pursuant to Securities Purchase Agreement dated September 15, 2010.
10.9	Form of Warrant to Purchase Common Stock issued to Summer Street Research Partners.
10.10	Form of Securities Purchase Agreement, dated July 21, 2011, between the registrant and the purchasers party thereto.
10.11	First Amendment to Securities Purchase Agreement dated July 21, 2011.
10.12	Form of Warrant to Purchase Common Stock issued to investors pursuant to Securities Purchase Agreement dated July 21, 2011.
10.13	Form of Warrant to Purchase Common Stock issued to Matthew Dormer and Summer Street Research Partners.
10.14	Employment Agreement, dated November 1, 2009, by and between the Company and David A. Rosa.*
10.15	Letter Agreement, dated August 3, 2004, between the Company and WSP Trading Limited.*
21	Subsidiaries of the registrant.

* Indicates management contract or compensatory plan or arrangement.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders
Sunshine Heart, Inc.

We have audited the accompanying consolidated balance sheets of Sunshine Heart, Inc. and subsidiary as of December 31, 2010 and 2009, and the related statements of operations, stockholders' equity, and cash flows for each of the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements 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. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Sunshine Heart, Inc. at December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended, in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company's recurring losses from operations and projected future capital requirements raise substantial doubt about its ability to continue as a going concern. The financial statements do not contain any adjustments that might result from the outcome of this uncertainty.

/s/ Ernst & Young LLP

Minneapolis, Minnesota
September 30, 2011

SUNSHINE HEART, INC. AND SUBSIDIARY

Consolidated Balance Sheets

Dollars in thousands, except per share amounts	Dec 31, 2010	Dec 31, 2009	June 30, 2011 (unaudited)
Current assets			
Cash and cash equivalents	$ 12,350	$ 7,028	$ 6,463
Accounts receivable, net	247	124	24
Other current assets	182	88	197
Total current assets	**12,779**	**7,240**	**6,684**
Property, plant and equipment	**120**	**145**	**133**
TOTAL ASSETS	**$ 12,899**	**$ 7,385**	**$ 6,817**
Current liabilities			
Accounts payable	$ 696	$ 230	$ 302
Accrued salaries, wages, and other compensation	114	84	305
Total current liabilities	**810**	**314**	**607**
Total liabilities	**810**	**314**	**607**
Stockholders's equity			
Preferred stock as of June 30, 2011, December 31, 2010 and December 31, 2009, $0.0001 par value per share; authorized 40,000,000 shares	—	—	—
Common stock as of June 30, 2011, December 31, 2010 and December 31, 2009, par value $0.0001 per share; authorized 1,960,000,000 shares; issued and outstanding 1,018,845,710, 1,012,793,468, and 539,078,350, respectively	924	455	930
Additional paid-in capital	59,163	47,637	59,382
Accumulated other comprehensive income:			
Foreign currency translation adjustment	995	372	1,180
Accumulated deficit	(48,993)	(41,393)	(55,282)
Total stockholders' equity	**12,089**	**7,071**	**6,210**
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	**$ 12,899**	**$ 7,385**	**$ 6,817**

See notes to the consolidated financial statements

SUNSHINE HEART, INC. AND SUBSIDIARY

Consolidated Statements of Operations

Dollars in thousands, except per share amounts	Year ended Dec 31, 2010	Year ended Dec 31, 2009	Six months ended June 30, 2011 (unaudited)	Six months ended June 30, 2010 (unaudited)
Net sales	**$ 407**	**$ 224**	**$ —**	**$ 151**

Operating expenses				
Selling, general and administrative	2,598	2,232	1,820	1,091
Research and development	6,229	3,425	4,666	2,707
Total operating expenses	8,827	5,657	6,486	3,798
Loss from operations	**(8,420)**	**(5,433)**	**(6,486)**	**(3,647)**
Interest income	150	91	197	90
Loss before income taxes	**(8,270)**	**(5,342)**	**(6,289)**	**(3,557)**
Income tax benefit	**(670)**	**—**	**—**	**(670)**
Net loss	**$ (7,600)**	**$ (5,342)**	**$ (6,289)**	**$ (2,887)**
Basic and diluted loss per share	**$ (0.01)**	**$ (0.01)**	**$ (0.01)**	**(0.01)**
Weighted average shares outstanding - basic and diluted	**577,024**	**359,686**	**1,016,594**	**539,078**

See notes to the consolidated financial statements

SUNSHINE HEART, INC. AND SUBSIDIARY

Consolidated Statements of Stockholders' Equity

(In thousands)	Outstanding Shares	Common Stock	Additional Paid in Capital	Accumulated Other Comprehensive Income Foreign Currency Translation Adjustment	Accumulated Deficit	Stockholders' Equity
Balance December 31, 2008	**291,724**	**$ 242**	**$ 39,772**	**$ (477)**	**$ (36,051)**	**$ 3,486**
Comprehensive loss:						
Net loss					(5,342)	(5,342)
Foreign currency translation adjustment				849		849
Total comprehensive loss						(4,493)
Stock based compensation			128			128
Issuance of common stock, net	247,354	213	7,737			7,950
Balance December 31, 2009	**539,078**	**455**	**47,637**	**372**	**(41,393)**	**7,071**
Comprehensive loss:						
Net loss					(7,600)	(7,600)
Foreign currency translation adjustment				623		623
Total comprehensive loss						(6,977)
Stock based compensation			78			78
Issuance of common stock, net	473,715	469	11,448			11,917
Balance December 31, 2010	**1,012,793**	**924**	**59,163**	**995**	**(48,993)**	**12,089**
Comprehensive loss:						
Net loss					(6,289)	(6,289)
Foreign currency translation adjustment				185		185
Total comprehensive loss						(6,104)
Stock based compensation			42			42
Issuance of common stock, net	6,053	6	177			183
Balance June 30, 2011 (unaudited)	**1,018,846**	**$ 930**	**$ 59,382**	**$ 1,180**	**$ (55,282)**	**$ 6,210**

See notes to the consolidated financial statements

SUNSHINE HEART, INC. AND SUBSIDIARY

Consolidated Statements of Cash Flows

(In thousands)	Year ended Dec 31, 2010	Year ended Dec 31, 2009	Six months ended June 30, 2011 (unaudited)	Six months ended June 30, 2010 (unaudited)
Reconciliation of net loss to net cash provided by (used in) operations				
Net loss	$ (7,600)	$ (5,342)	$ (6,289)	$ (2,887)
Adjustments to reconcile net loss to cash flows from operating activities:				
Depreciation and amortization	32	11	30	31
Stock based compensation expense	78	128	42	44

Changes in asset and liabilities:				
Accounts receivable	(123)	(118)	223	(57)
Other current assets	(94)	(12)	(15)	(665)
Accounts payable and accrued expenses	496	(477)	(203)	147
Net cash used in operations	**(7,210)**	**(5,810)**	**(6,212)**	**(3,387)**
Cash flows used in investing activities:				
Purchase of property and equipment	(7)	(3)	(43)	—
Net cash used in investing activities	**(7)**	**(3)**	**(43)**	**—**
Cash flows provided by financing activites:				
Net proceeds from the sale of common stock	11,917	7,950	183	—
Net cash provided by financing activities	**11,917**	**7,950**	**183**	**—**
Effect of exchange rate changes on cash	623	849	185	(181)
Net increase (decrease) in cash and cash equivalents	5,322	2,986	(5,887)	(3,568)
Cash and cash equivalents - beginning of period	7,028	4,042	12,350	7,028
Cash and cash equivalents - end of period	**12,350**	**7,028**	**6,463**	**3,460**

See notes to the consolidated financial statements

SUNSHINE HEART, INC. AND SUBSIDIARY

Notes to Consolidated Financial Statements
(in thousands, except share and per share data)

Note 1 - Nature of Business and Significant Accounting Policies

Nature of Business: Sunshine Heart (the "Company") was founded in November 1999 and incorporated in Delaware in August 2002. We are headquartered in Eden Prairie, MN and have a wholly owned subsidiary, Sunshine Heart Company Pty Ltd, located in St Leonards, New South Wales, Australia. We are a medical device company developing innovative technologies for cardiac and coronary disease. The company's primary product, the C-Pulse® Heart Assist System, is an implantable, non-blood contacting, heart assist therapy for the treatment of moderate to severe heart failure which can be implanted using a minimally invasive procedure. C-Pulse is designed to relieve the symptoms of heart failure through the use of counter-pulsation technology by enabling an increase in cardiac output, an increase in coronary blood flow, and a reduction in the heart's pumping load. The Company has received approval from the U.S. Food and Drug Administration to conduct a U.S. feasibility clinical trial with the C-Pulse System. Our shares of common stock in the form of CHESS Depositary Interests (CDIs) have been publicly traded in Australia on the Australian Securities Exchange (ASX) since September 2004.

Going Concern: The Company's financial statements have been prepared and presented on a basis assuming it continues as a going concern.

During the years ended December 31, 2010 and 2009, and the six months ended June 30, 2011, the Company incurred losses from operations and net cash outflows from operating activities as disclosed in the consolidated statements of operations and cash flows, respectively. At June 30, 2011, we had an accumulated deficit of $55.3 million and we expect to incur losses for the foreseeable future. To date, we have been funded by private and public equity financings. Although we believe that we will be able to successfully fund our operations, there can be no assurance that we will be able to do so or that we will ever operate profitably.

The Company's ability to continue as a going concern is dependent on the Company's ability to raise additional capital based on the achievement of existing milestones as and when required. Should the future capital raising not be successful, the Company may not be able to continue as a going concern. Furthermore, the ability of the Company to continue as a going concern is subject to the ability of the Company to develop and successfully commercialize the product being developed. If the Company is unable to obtain such funding of an amount and timing necessary to meet its future operational plans, or to successfully commercialize its intellectual property, the Company may be unable to continue as a going concern. No adjustments have been made relating to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company not continue as a going concern.

Basis of Presentation: The accompanying consolidated financial statements include the accounts of Sunshine Heart, Inc. and its wholly-owned subsidiary, Sunshine Heart Company Pty Ltd. (collectively, "Sunshine Heart" or the "Company"). All inter-company accounts and transactions between consolidated entities have been eliminated.

Unaudited Interim Consolidated Financial Information: The interim balance sheet as of June 30, 2011, statements of operations and cash flows for the six months ended June 30, 2011 and 2010 and stockholders' equity (deficit) for the six months ended June 30, 2011 and related interim information contained in the notes to these financial statements are unaudited. In the opinion of management, such unaudited interim consolidated information has been prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") and includes all adjustments consisting of normal recurring accruals necessary for the fair presentation of this interim information when read in conjunction with the audited financial statements and notes thereto. Results for the six months ended June 30, 2011 are not necessarily indicative of the results that may be expected for the year ending December 31, 2011 or any other interim period or for any other future year.

Use of Estimates: The preparation of 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 and disclosures in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

Fair Value of Financial Instruments: Our financial instruments consist of cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities. We believe that the carrying amounts of the financial instruments approximate their respective current fair values due to their relatively short maturities.

Pursuant to the requirements of the Fair Value Measurements and Disclosures Topic of the FASB Codification, the Company's financial assets and liabilities measured at fair value on a recurring basis are classified and disclosed in one of the following three categories:

Level 1: Financial instruments with unadjusted quoted prices listed on active market exchanges.

Level 2: Financial instruments lacking unadjusted, quoted prices from active market exchanges, including over the counter traded financial instruments. The prices for the financial instruments are determined using prices for recently traded financial instruments with similar underlying terms as well as directly or indirectly observable inputs, such as interest rates and yield curves that are observable at commonly quoted intervals.

Level 3: Financial instruments that are not actively traded on a market exchange. This category includes situations where there is little, if any, market activity for the financial instrument. The prices are determined using significant unobservable inputs or valuation techniques.

All cash and cash equivalents are considered Level 1 measurements for all periods presented. We do not have any financial instruments classified as Level 2 or Level 3 and there were no movements between categories.

Cash and Cash Equivalents: Cash and cash equivalents consist of cash, money market funds and term deposits with original maturities of three months or less. The carrying value of these instruments approximates fair value. The balances, at times, may exceed federally insured limits. We have not experienced any losses on our cash and cash equivalents.

Accounts Receivable: Accounts receivable are unsecured, are recorded at net realizable value, and do not bear interest. We make judgments as to our ability to collect outstanding receivables based upon significant patterns of uncollectiblity, historical experience, and managements' evaluation of specific accounts and will provide an allowance for credit losses when collection becomes doubtful. The Company performs credit evaluations of its customers' financial condition on an as-needed basis. Payment is generally due 30 days from the invoice date and accounts past 30 days are individually analyzed for collectability. When all collection efforts have been exhausted, the account is written off against the related allowance. No allowance for doubtful accounts was considered necessary as of June 30, 2011, December 31, 2010 or December 31, 2009.

Other Current Assets: Other current assets represent prepayments and deposits made by the Company.

Property, Plant and Equipment: Property and equipment is stated at cost less accumulated depreciation. Depreciation is computed based upon the estimated useful lives of the respective assets. Leasehold improvements are amortized using the straight-line method over the shorter of the lease term or the estimated useful life of the assets. Repairs and maintenance costs are expensed as incurred. Major betterments and improvements, which extend the useful life of the item, are capitalized and depreciated. The cost and accumulated depreciation of property, plant and equipment retired or otherwise disposed of are removed from the related accounts, and any residual values are charged or credited to expenses. Depreciation expense has been calculated using the following estimated useful lives:

Office furniture and equipment	10-15 years
Computer equipment	3-4 years
Laboratory and research equipment	3-15 years

Depreciation expense was $32, $11, $30, and $31 for the years ended December 31, 2010 and 2009, and for the six months ended June 30, 2011 and 2010, respectively.

Impairment of Long-lived Assets: Long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If the impairment tests indicate that the carrying value of the asset is greater than the expected undiscounted cash flows to be generated by such asset, an impairment loss would be recognized. The impairment loss is determined as the amount by which the carrying value of such asset exceeds its fair value. We generally measure fair value by considering sale prices for similar assets or by discounting estimated future cash flows from such assets using an appropriate discount rate. Assets to be disposed of are carried at the lower of their carrying value or fair value less costs to sell. Considerable management judgment is necessary to estimate the fair value of assets, and accordingly, actual results could vary significantly from such estimates. There have been no impairment losses for long-lived assets, for the years ended December 31, 2010 and 2009, or for the six months ended June 30, 2011.

Revenue Recognition: We recognize revenue when (i) persuasive evidence of a customer arrangement exists; (ii) the price is fixed or determinable and free of contingencies or uncertainties; (iii) collectability is reasonably assured; and (iv) product delivery has occurred, which is when product title transfers to the customer, or services have been rendered. Sales are not conditional based on customer acceptance provisions or installation obligations. Our C-Pulse Heart Assist System is not approved for commercial sale. Our revenue consists solely of sales of the C-Pulse to hospitals and clinics under contract in conjunction with our clinical trials. For clinical trial implant revenue, the product title generally transfers on the date the product is implanted. We do not charge hospitals and clinics for

shipping. We expense shipping costs at the time we report the related revenue and record them in cost of sales.

Foreign Currency Translation and Transactions: Foreign denominated monetary assets and liabilities are translated at the rate of exchange prevailing at the balance sheet date. Results of operations are translated using the average rates prevailing during the reporting period. The translation adjustment has not been included in determining the Company's net loss, but has been reported separately and is accumulated in a separate component of equity. Effective January 1, 2011, we concluded that the functional currency of our US based parent company is the US dollar. Prior to that date the functional currency of both the US based parent company and the Company's Australian subsidiary was the Australian dollar. For financial reporting purposes, the reporting currency of the company is the US dollar. When a transaction is denominated in a currency other than the entity's functional currency, the Company recognizes a transaction gain or loss in net earnings.

Comprehensive Income (Loss): The components of comprehensive income (loss) include net income (loss) and the effects of foreign currency translation adjustments.

Stock-Based Compensation: The Company recognizes all share-based payments, including grants of stock options, to in the income statement as an operating expense, based on their fair value over the requisite service period.

The Company computes the estimated fair values of stock options using the Black-Scholes option pricing model. No tax benefit has been recorded due to the full valuation allowance on deferred tax assets that the Company has recorded.

Stock-based compensation expense is based on awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Equity instruments issued to non-employees, and for services and goods are shares of the Company's common stock, warrants or options to purchase shares of the Company's common stock. These shares, warrants or options are either fully-vested and exercisable at the date of grant or vest over a certain period during which services are provided. The Company expenses the fair market value of these securities over the period in which the related services are received.

See Note 3 for further information regarding the assumptions used to calculate the fair value of share-based compensation.

Income Taxes: Deferred income taxes are provided on a liability method whereby deferred tax assets are recognized for deductible temporary differences and operating loss and tax credit carry forwards. Deferred tax liabilities are recognized for taxable temporary differences, which are the differences between the reported amounts of assets and liabilities and their tax basis. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred tax assets and liabilities are adjusted for the effects of changes in tax laws and rates on the date of enactment.

Net Loss per Share: Basic net loss attributable to common stockholders, on a per share basis, is computed by dividing income available to common stockholders (the numerator) by the weighted-average number of common shares outstanding (the denominator) during the period. Shares issued during the period and shares reacquired during the period are weighted for the portion of the period that they were outstanding. The computation of diluted earnings per share, or EPS, is similar to the computation of basic EPS except that the denominator is increased to include the number of additional common shares that would have been outstanding if the dilutive potential common shares had been issued computed in accordance with the treasury stock method. In addition, in computing the dilutive effect of convertible securities, the numerator is adjusted to add back the after-tax amount of interest recognized in the period associated with any convertible debt. Shares reserved for outstanding stock warrants and options totaling 262,197,208, 15,757,816, 246,768,993 and 15,757,816 for the years ended December 31, 2010 and 2009 and the six months ended June 30, 2011 and 2010, respectively, were excluded from the computation of loss per share as their effect was antidilutive due to the Company's net loss in each of those years.

Research and Development: Research and development expenses consist primarily of development personnel and non-employee contractor costs related to the development of new products and services, enhancement of existing products and services, quality assurance and testing. The Company incurred research and development expenses of $6,229, $3,425, $4,666, and $2,707 for the years ended December 31, 2010 and 2009, and for the six months ended June 30, 2011 and 2010, respectively.

Subsequent Events: The Company evaluates events through the date the financial statements are filed for events requiring adjustment to or disclosure in the financial statements.

New Accounting Pronouncements: In June 2011, the FASB issued additional guidance for the presentation of comprehensive income. The new guidance changes the way other comprehensive income ("OCI") appears within the financial statements. Companies will be required to show net income, OCI and total comprehensive income in one continuous statement or in two separate but consecutive statements. Components of OCI may no longer be presented solely in the statement of changes in shareholders' equity. Any reclassification between OCI and net income will be presented on the face of the financial statements. The new guidance is effective for the Company beginning January 1, 2012. The adoption of the new guidance will not impact the measurement of net income or other comprehensive income.

In January 2010, FASB issued Accounting Standards Update, or ASU, 2010-06, *Improving Disclosure about Fair Value Measurements,* or ASU 2010-06. ASU 2010-06 revises two disclosure requirements concerning fair value measurements and clarifies two others. It requires separate presentation of significant transfers into and out of Levels 1 and 2 of the fair value hierarchy and disclosure of the reasons for such transfers. It also requires the presentation of purchases, sales, issuances and settlements within Level 3 on a gross basis rather than a net basis. The amendments also clarify that disclosures should be disaggregated by class of asset or liability and that disclosures about inputs and valuation techniques should be provided for both recurring and non-recurring fair value measurements. ASU 2010-06 is effective for interim and annual reporting periods beginning after December 15, 2009, except for certain Level 3 activity disclosure requirements that will be effective or reporting periods beginning after December 15, 2010.

In May 2011, FASB issued ASU 2011-04, *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS.* This accounting update generally aligns the principles for fair value measurements and the related disclosure requirements under U.S. GAAP and International Financial Reporting Standards. From a U.S. GAAP perspective, the amendments are largely clarifications, but some could have a significant effect on certain companies. A number of new disclosures also are required. Except for certain disclosures, the guidance applies to public and nonpublic companies and is to be applied prospectively. For public companies and nonpublic companies, the amendments are effective during interim and annual periods beginning after December 15, 2011. Early adoption by public companies is not permitted. Nonpublic companies may apply the amendments early, but no earlier than for interim periods beginning after December 15, 2011.

Note 2 - Balance Sheet Information

Property, Plant and Equipment

Property, plant and equipment were as follows:

	Dec. 31, 2010		Dec. 31, 2009		June 30, 2011 (unaudited)	
Library	$	1	$	1	$	1
Office Furniture & Fixtures		90		79		94
Leasehold Improvements		78		69		82
Software		28		25		36
Production Equipment		179		157		186
Computer Equipment		65		51		89
Total	$	441	$	382	$	488
Accumulated Depreciation		(321)		(237)		(355)
	$	120	$	145	$	133

Note 3 - Equity

Private Placement

In August and September 2009, the Company placed 245,164,998 shares of common stock (in the form of CDIs) for proceeds, net of transaction costs, of $7,915.

In November and December, 2010, the Company placed 473,715,118 shares of common stock (in the form of CDIs) for proceeds, net of transaction costs, of $11,917.

In January 2011, the Company placed 3,571,429 shares of common stock (in the form of CDIs) for proceeds, net of transaction costs, of $99.

Stock Options

The Company recognized share-based compensation expense related to stock options and grants of common stock to employees, directors and consultants of $78, and $128 during the years ended December 31, 2010 and 2009, respectively, and $42 and $44 during the six month periods ended June 30, 2011 and 2010, respectively. The following table summarizes the stock-based compensation expense which was recognized in the Consolidated Statements of Operations for the years ended December 31, 2010 and 2009 and the six months ended June 30, 2011 and 2010:

	Dec 31, 2010		Dec 31, 2009		June 30, 2011 (unaudited)		June 30, 2010 (unaudited)	
Selling, general and administrative	$	55	$	96	$	31	$	33
Research and development		23		32		11		11
Total	$	78	$	128	$	42	$	44

As of June 30, 2011 and December 31, 2010 the total compensation cost related to all nonvested awards not yet recognized was $52 and $94, respectively. This amount is expected to be recognized over the remaining weighted-average period of 1.23 years. As of June 30, 2011 and 1.19 years as of December 31, 2010.

The Company has granted stock options to certain employees and directors under the Amended and Restated 2002 Stock Plan, (the “Plan”). The Plan is designed to assist in the motivation and retention of employees and to recognize the importance of employees to the long-term performance and success of the Company. The Company has also granted stock options to certain consultants outside of the Plan. The majority of the options to purchase common stock vest on the anniversary of the date of grant, which ranges from one to four years. Additionally, certain stock options vest upon the closing price of the Company’s common stock reaching certain minimum levels, as defined in the agreements. Finally, certain other stock options vest upon the meeting of certain Company milestones such as the signing of specific agreements and the completion of the Company’s anticipated listing on a U.S. stock exchange. As of June 30, 2011, the Company expects that all such market and performance conditions will be met. Share-based compensation expense related to these awards is recognized on a straight-line basis over the related vesting term. It is the Company’s policy to issue new shares upon the exercise of options. The Plan does not provide for a fixed number of available shares.

The following is a summary of the Plan and non-Plan stock option activity during the year ended December 31, 2010 and 2009, and for the six months ended June 30, 2011.

	Options Outstanding		Weighted Average Exercise price	Remaining Average Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding, December 31, 2008	29,448,121	$	0.20		
2009 Grants	—		—		
2009 Exercises	2,188,923		0.02		
2009 Forfeitures/expiration	11,501,382		0.25		

Outstanding, December 31, 2009	15,757,816		0.19			
2010 Grants	10,000,000		0.05			
2010 Exercises	—		—			
2010 Forfeitures/expiration	418,167		0.18			
Outstanding, December 31, 2010	25,339,649		0.14	7.26	$	819
Exercisable at December 31, 2010	18,085,236		0.16	6.54		819
2011 Grants (unaudited)	—		—			
2011 Exercises (unaudited)	38,800		0.02			
2011 Forfeitures/expiration (unaudited)	1,175,130		0.20			
Outstanding, June 30, 2011	24,125,719	$	0.13	6.79	$	30
Exercisable at June 30, 2011 (unaudited)	17,945,326	$	0.16	6.04	$	30

The aggregate intrinsic value is defined as the difference between the market value of the Company's common stock (based on the trading price of the Company's CDIs on ASX) as of the end of the period and the exercise price of the in-the-money stock options. The total intrinsic value of stock options exercised during the years ended December 31, 2010 and 2009 and for the six months ended June 30, 2011 and 2010 was $0, $48, $1 and $0, respectively. Of the 6,180,393 non vested options, 14,281 are held by consultants, the majority of which vest in 2012. Total cash proceeds from exercised options were $0, $35, $1, and $0 for the years ended December 31, 2010 and 2009 and the six months ended June 30, 2011 and 2010, respectively.

The weighted-average fair value of stock options granted during the year December 31, 2010 was $0.01. No options were issued during 2009, or during the six months ended June 30, 2011 or 2010.

The fair value of each stock option is estimated at the grant date using the Black-Scholes option pricing model. The Company has not historically paid dividends to its shareholders, and, as a result assumed a dividend yield of 0%. The risk free interest rate is based upon the rates of Australian bonds with a term equal to the expected term of the option. The expected volatility is based upon the historical price of the Company's CDIs. The expected term of the stock options to purchase common stock is based upon the outstanding contractual term of the stock option on the date of grant. The Company used the following weighted-average assumptions in calculating the fair value of options granted during the years ended December 31 , 2010 and 2009, and for the six months ended June 30, 2011 and 2010.

	Year ended December 31		Six Months ended June 30,	
	2010	2009	2011	2010
Expected dividend yield	0%	N/A	N/A	N/A
Risk-free interest rate	4.97%	N/A	N/A	N/A
Expected volatility	65%	N/A	N/A	N/A
Expected life (in years)	5	N/A	N/A	N/A

As of June 30, 2011, the Company had granted 119,118,000 options that are subject to the approval of the 2011 Equity Incentive Plan (the "Plan") and the options that relate to directors are further subject to shareholder approval.

The Company determined that the shareholder approval was not perfunctory and as such a grant date had not been established as of June 30, 2011 such that no compensation expense relating to these options was recorded in 2011.

Warrants

The Company issued 66,710,259 warrants with a term of 4 years as part of the private placements previously described. These warrants were issued on November 13, 2010 and have an exercise price of AU$0.032.

Attached to these warrants is a requirement to file a Form 10-12G registering the Company's common stock with the Securities and Exchange Commission and file an application to list on a US exchange by September 30, 2011. In the event the Company does not satisfy these requirements, the number of warrants issued in the placement will increase by 10%.

During the six months ended June 30, 2011, 16,000,000 warrants expired.

Additional warrants to purchase common stock were issued in connection with the issuance of $800,000 convertible promissory notes in June 2004, which were issued as a bridging loan prior to the initial public offering of the Company's CDIs on the ASX. These warrants were issued to related party entities affiliated with certain directors of the Company and to one unrelated party. The warrants entitle the holders to receive 3,200,000 shares at an exercise price of AU$0.25. The warrants have an exercise period of ten years and expire in June 2014. No warrants were exercised during the year.

As part of the private placements completed during 2010, the Company issued 170,147,300 warrants to purchase common stock at an exercise price of $0.03 per share. The warrants have a stated life of four years.

As part of the private placement completed during 2011, the Company issued 1,785,715 warrants to purchase common stock at an exercise price of $0.03 per share. The warrants have a stated life of four years.

During the six months ended June 30, 2011, 2,441,473 warrants were exercised at a price of $0.03 for total proceeds of $83.

Note 4 - Income Taxes

The components of income tax expense for the years ended December 31, 2010 and 2009, and the six months ended June 30, 2011, consist of the following:

	December 31, 2010	December 31, 2009	June 30, 2011 (unaudited)
Income tax provision:			
Current:			
U.S. and state	—	—	—
Foreign	(670)	—	—
Deferred:			
U.S. and state	—	—	—
Foreign	—	—	—
Total income tax expense	(670)	—	—

Actual income tax expense differs from statutory federal income tax benefit for the years ended December 31, 2010 and 2009 and the six months ended June 30, 2011 as follows:

	December 31, 2010	December 31, 2009	June 30, 2011 (unaudited)
Statutory federal income tax benefit	(2,812)	(1,816)	(2,138)
State tax benefit, net of federal taxes	(417)	(259)	(379)
Foreign tax	225	199	99
R&D tax credit rebate	(670)	—	—
Nondeductible expenses	—	—	—
Valuation allowance increase	3,033	1,787	2,436
Other	(29)	89	(18)
Total income tax expense	(670)	—	—

Deferred taxes as of December 31, 2010 and 2009, and June 30, 2011, consist of the following:

	December 31, 2010	December 31, 2009	June 30, 2011 (unaudited)
Deferred tax assets (liabilities):			
Accrued expenses	120	84	113
Stock based compensation	385	332	445
Capitalized patent costs	140	132	137
Other	7	7	7
Net operating losses	16,210	11,852	19,643
	16,862	12,407	20,345
Less: valuation allowance	(16,862)	(12,407)	(20,345)
	—	—	—

As of June 30, 2011, we had U.S. net operating loss (NOL) carryforwards of approximately $7,977 for U.S. income tax purposes, which expire in 2023 through 2031, and NOLs in the Commonwealth of Australia of approximately $51,655 which we can carry forward indefinitely. U.S. net operating loss carryforwards cannot be used to offset taxable income in foreign jurisdictions. In addition, future utilization of net operating loss carryforwards in the U.S. may be subject to certain limitations under Section 382 of the Internal Revenue Code. This section generally relates to a 50 percent change in ownership of a company over a three-year period. No formal study has been prepared as of the balance sheet date to determine any applicable limitations on the utilization of the U.S. net operating losses.

We provide for a valuation allowance when it is more likely than not that we will not realize a portion of the deferred tax assets. We have established a valuation allowance for U.S. and foreign deferred tax assets due to the uncertainty that enough taxable income will be generated in those taxing jurisdictions to utilize the assets. Therefore, we have not reflected any benefit of such deferred tax assets in the accompanying financial statements. For the years ended December 31, 2010 and 2009, and the six months ended June 31, 2011, the valuation allowance increased by $4,455, $3,986 and $3,484, respectively. Changes in the valuation allowance do not equal the amounts reflected in the statutory rate reconciliation due to fluctuating currency exchange rates.

The Company has adopted accounting guidance related to uncertain tax positions. This accounting guidance prescribes a recognition threshold and measurement attribute for recognition and measurement of a tax position taken or expected to be taken in a tax return. It also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure and transition. The adoption of uncertain tax position guidance did not have a material impact on the Company's consolidated financial statements. Additionally, the adoption of the guidance had no impact on retained earnings. The Company had no material uncertain tax positions as of June 30, 2011, December 31, 2010 or December 31, 2009.

We recognize interest and penalties on unrecognized tax benefits as well as interest received from favorable tax settlements within income tax expense. Upon adoption of this guidance, we recognized no interest or penalties related to uncertain tax positions. During the years ended December 31, 2010 and 2009, and the six months ended June 30, 2011, we recorded no accrued interest or penalties related to uncertain tax positions.

The fiscal tax years ended June 30, 2007 through June 30, 2011 remain open to examination by the Internal Revenue Service. For the states of California and Minnesota, the fiscal tax year ended June 30, 2006 is also still open to examination. Additionally, the returns of the Company's Australian subsidiary are subject to examination by Australian tax authorities for the fiscal tax years ended June 30, 2007 through June 30, 2011.

Note 5 — Commitments and Contingencies

Leases

During the year ended December 31, 2010 and 2009, and the six month periods ended June 30, 2011, we paid $4, $5, $0, and $4 to SCP Technology and Growth Pty Limited, a company controlled by a director of our Australian subsidiary, for the provision of intellectual property and patent services. There were no amounts outstanding to this entity at June 30, 2011 or December 31, 2010. At December 31, 2009, we had outstanding accounts payable of $5 due to the related party. In September 2011, we sold 2,875,000 shares of our common stock to Jeffrey Mathiesen, our Chief Financial Officer, at the price of A$0.04 per share as part of a private placement.

We lease office space under non-cancelable operating leases that expire at various times through September 2012. Rent expense related to operating leases was approximately $186, $151, $73 and $95 for the years ended December 31, 2010 and 2009, and the six months ended June 30, 2011 and 2010, respectively. Future minimum lease payments under non-cancelable operating leases as of June 30, 2011 were approximately $112 through December 31, 2011, and $99 for the year ending December 31, 2012. We do not have any significant lease obligations beyond 2012.

Employee Benefits

All Australian employees are entitled to varying levels of benefits on retirement, disability or death. The superannuation plans provide accumulated benefits. Employees contribute to the plans at various percentages of their wages and salaries. Contributions by the Company of up to 9% of employees' wages and salaries are legally enforceable in Australia. For the years ended December 31, 2010 and 2009, and for the six months ended June 30, 2011 and 2010, the Company incurred expense of $64, $57, $43, and $29, respectively.

Note 6 — Related Party Transaction

During the year ended December 31, 2010 and 2009, and the six month periods ended June 30, 2011, we paid $4, $5, $0, and $4 to SCP Technology and Growth Pty Limited, a company controlled by a director of our Australian subsidiary, for the provision of intellectual property and patent services. There were no amounts outstanding to this entity at June 30, 2011 or December 31, 2010. At December 31, 2009, we had outstanding accounts payable of $5 due to the related party. In September 2011, we sold 2,875,000 shares of our common stock to Jeffrey Mathiesen, our Chief Financial Officer, at the price of A$0.04 per share as part of a private placement.

Note 7 — Subsequent Events

On September 16, 2011 we completed a private placement of common stock totaling $7,700 (A$7,400). We issued 184,300 shares (in the form of CDIs) at $A0.04 per share to institutional and individual investors. In addition, we issued warrants to purchase 57,400 shares of common stock at prices ranging from A$0.04 to A$0.056 per share, over terms of four to five years. Net proceeds from the placement totaled $7,300 and will be used to fund operations.

Note 8 — Segment and Geographic Information

The Company has one reportable segment, cardiac and coronary disease products. The Company's geographic regions include the United States and Australia.

Revenue earned relating to reimbursement of clinical trials is earned primarily in the United States. Interest income is primarily earned in Australia.

Long-lived assets are located primarily in Australia.

Exhibit 3.1

FOURTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
SUNSHINE HEART, INC.

The undersigned, David Rosa and Jeffrey Mathiesen hereby certify that:

1. They are the duly elected and acting Chief Executive Officer and Secretary, respectively, of SUNSHINE HEART, INC., a Delaware corporation.

2. The Certificate of Incorporation of Sunshine Heart, Inc. was originally filed with the Secretary of State of Delaware on August 22, 2002 under the name "Sunshine Heart, Inc." The Certificate of Incorporation was subsequently amended and restated pursuant to an Amended and Restated Certificate of Incorporation on December 3, 2002. The Amended and Restated Certificate of Incorporation was subsequently amended and restated pursuant to that certain Second Amended and Restated Certificate of Incorporation, as filed with the Secretary of State of Delaware on August 18, 2004. The Second Amended and Restated Certificate of Incorporation was subsequently amended and restated pursuant to that certain Third Amended and Restated Certificate of Incorporation, as filed with the Secretary of State of Delaware on September 20, 2004. The Third Amended and Restated Certificate of Incorporation was subsequently amended pursuant to that certain First Amendment to the Third Amended and Restated Certificate of Incorporation and that certain Second Amendment to the Third Amended and Restated Certificate of Incorporation.

3. The Third Amended and Restated Certificate of Incorporation of Sunshine Heart, Inc., as amended, is hereby amended and restated to read in full as follows:

ARTICLE I
NAME

The name of the corporation is SUNSHINE HEART, INC. (the ***"Corporation"***).

ARTICLE II
REGISTERED OFFICE AND REGISTERED AGENT

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III
PURPOSE

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

ARTICLE IV
AUTHORIZED STOCK AND RELATIVE RIGHTS

A. The Corporation is authorized to issue two classes of stock to be designated, respectively, ***"Common Stock"*** and ***"Preferred Stock"***. The total number of shares that the Corporation is authorized to issue is Two Billion (2,000,000,000) shares, each with a par value of $0.0001 per share. One Billion Nine Hundred Sixty Million (1,960,000,000) shares shall be Common Stock and Forty Million (40,000,000) shares shall be Preferred Stock.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the ***"Board of Directors"***) is hereby expressly authorized to provide for the issue of all or any of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

C. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Fourth Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Fourth Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

ARTICLE V
MANAGEMENT

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. BOARD OF DIRECTORS.

1. Number. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of directors constituting the Board of Directors.

2. Classes. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the directors shall be divided into three (3) classes designated as Class I, Class II and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the initial classification of the Board of Directors, the term of office of the Class I directors shall expire and the Class I directors shall be elected for a term of that will expire at the fourth annual meeting of stockholders following the initial classification of the Board of Directors. At the second annual meeting of stockholders following such initial classification, the term of office of the Class II directors shall expire and the Class II directors shall be elected for a term that will expire at the fifth annual meeting of stockholders following the initial classification of the Board of Directors. At the third annual meeting of stockholders following such initial classification, the term of office of the Class III directors shall expire and the Class III directors shall be elected for a term that will expire at the sixth annual meeting of stockholders following the initial classification of the Board of Directors. At each succeeding annual meeting of stockholders, directors shall be elected for a term that will expire at the third annual meeting of stockholders following such annual meeting to succeed the directors of the class whose terms expire at such annual meeting.

3. Term. Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

4. Removal of Directors.

i. Subject to the rights of any series of Preferred Stock to elect additional directors under specified circumstances, neither the Board of Directors nor any individual director may be removed without cause.

ii. Subject to any limitation imposed by law, any individual director or directors may be removed only with cause by the affirmative vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at a meeting of stockholders and entitled to vote generally on the election of directors, voting together as a single class.

5. Vacancies. Subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution

that any such vacancies or newly created directorships shall be filled by the stockholders, except as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director’s successor shall have been elected and qualified.

B. BYLAW AMENDMENTS.

1. The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Corporation. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors.

2. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Fourth Amended and Restated Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

C. BALLOTS. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

D. ACTION BY STOCKHOLDERS. No action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders called in accordance with the Bylaws and no action shall be taken by the stockholders of the Corporation by written consent or electronic transmission.

E. ADVANCE NOTICE. Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

F. FORUM. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, or (d) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section.

ARTICLE VI
PERSONAL LIABILITY OF DIRECTORS AND INDEMNIFICATION

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated to the fullest extent permitted by the DGCL, as so amended.

B. Any repeal or modification of this Article VI shall be prospective and shall not affect the rights under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

ARTICLE VII
AMENDMENT

A. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Fourth Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in Section B of this Article VII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding any other provisions of this Fourth Amended and Restated Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Corporation required by law or by this Fourth Amended and Restated Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI, and VII.

* * * * * *

The foregoing Fourth Amended and Restated Certificate of Incorporation has been duly adopted by the Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 222, 242 and 245 of the General Corporation Law of the State of Delaware.

Executed at Eden Prairie, Minnesota, on September 20, 2011

/s/ David Rosa
David Rosa, Chief Executive Officer

/s/ Jeffrey Mathiesen
Jeffrey Mathiesen, Secretary

Exhibit 3.2

AMENDED AND RESTATED BYLAWS

OF

SUNSHINE HEART, INC.
(A DELAWARE CORPORATION)

TABLE OF CONTENTS

AMENDED AND RESTATED BYLAWS

OF

SUNSHINE HEART, INC.
(A DELAWARE CORPORATION)

ARTICLE I
OFFICES

1. REGISTERED OFFICE. The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle.

2. OTHER OFFICES. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II
CORPORATE SEAL

3. CORPORATE SEAL. The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, “Corporate Seal-Delaware.” Such seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III
STOCKHOLDERS’ MEETINGS

4. PLACE OF MEETINGS. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (the ***“DGCL”***).

5. ANNUAL MEETINGS.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders (with respect to business other than nominations); (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in Section 5(b) below, who is entitled to vote

at the meeting and who complied with the notice procedures set forth in Section 5. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the ***"1934 Act"***)) before an annual meeting of stockholders.

(b) At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting.

(i) For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Amended and Restated Bylaws (the ***"Bylaws"***), the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii) and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class and number of shares of each class of capital stock of the corporation which are owned of record and beneficially by such nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, and (5) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 5(b)(iv). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

(ii) Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14(a)-8 under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, the stockholder must deliver written notice to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 5(b)(iii), and must update and supplement such written notice on a timely basis as set forth in Section 5(c). Such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, and any material interest (including any anticipated benefit of such business to any Proponent (as defined below) other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 5(b)(iv).

(iii) To be timely, the written notice required by Section 5(b)(i) or 5(b)(ii) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that, subject to the last sentence of this Section 5(b)(iii), in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(iv) The written notice required by Section 5(b)(i) or 5(b)(ii) shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a ***"Proponent"*** and collectively, the ***"Proponents"***): (A) the name and address of each Proponent, as they appear on the corporation's books; (B) the class, series and number of shares of the corporation that are owned beneficially and of record by each Proponent; (C) a description of any agreement, arrangement or understanding (whether oral or in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (D) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation entitled to vote at the meeting and intend to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 5(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 5(b)(ii)); (E) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 5(b)(i)) or to carry such proposal (with respect to a notice under Section 5(b)(ii)); (F) to the extent known by any Proponent, the name and address of any other stockholder supporting the proposal on the date of such stockholder's notice; and (G) a description of all Derivative Transactions (as defined below) by each Proponent during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions.

For purposes of Sections 5 and 6, a ***"Derivative Transaction"*** means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

(w) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation,

(x) which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the corporation,

(y) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes, or

(z) which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

(c) A stockholder providing written notice required by Section 5(b)(i) or (ii) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five (5) business days prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five (5) business days after the record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 5(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than two (2) business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two (2) business days prior to such adjourned or postponed meeting.

(d) Notwithstanding anything in Section 5(b)(iii) to the contrary, in the event that the number of directors in an Expiring Class (as defined below) is increased and there is no public announcement of the appointment of a director to such class, or, if no appointment was made, of the vacancy in such class, made by the corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with Section 5(b)(iii), a stockholder's notice required by this Section 5 and which complies with the requirements in Section 5(b)(i), other than the timing requirements in Section 5(b)(iii), shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation. For purposes of this Section, an ***"Expiring Class"*** shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

(e) A person shall not be eligible for election or re-election as a director unless the person is nominated either in accordance with clause (ii) of Section 5(a), or in accordance with clause (iii) of Section 5(a). Except as otherwise required by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 5(b)(iv)(D) and 5(b)(iv)(E), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

(f) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; provided, however, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 5(a)(iii) of these Bylaws.

(g) For purposes of Sections 5 and 6,

(i) ***"public announcement"*** shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act; and

(ii) ***"affiliates"*** and ***"associates"*** shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the ***"1933 Act"***).

6. SPECIAL MEETINGS.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption).

(b) The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. No business may be transacted at such special meeting otherwise than specified in the notice of meeting.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph, who shall be entitled to vote at the meeting and who delivers written notice to the Secretary of the corporation setting forth the information required by Section 5(b)(i). In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder of record may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if written notice setting forth the information required by Section 5(b)(i) of these Bylaws shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the later of the ninetieth (90th) day prior to such meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The stockholder shall also update and supplement such information as required under Section 5(c). In no event shall an adjournment or a postponement of a special meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's notice as described above.

(d) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; provided, however, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to nominations for the election to the Board of Directors to be considered pursuant to Section 6(c) of these Bylaws.

7. NOTICE OF MEETINGS. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

8. QUORUM. At all meetings of stockholders, except where otherwise provided by statute or by the corporation's Fourth Amended and Restated Certificate of Incorporation, as it may be amended from time to time (the ***"Certificate of Incorporation"***), or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

9. ADJOURNMENT AND NOTICE OF ADJOURNED MEETINGS. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

10. VOTING RIGHTS. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

11. JOINT OWNERS OF STOCK. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

12. LIST OF STOCKHOLDERS. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

13. ACTION WITHOUT MEETING. No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

14. ORGANIZATION.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and

constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV
DIRECTORS

15. NUMBER AND TERM OF OFFICE. The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

16. POWERS. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

17. CLASSES OF DIRECTORS. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the initial classification of the Board of Directors, the term of office of the Class I directors shall expire and the Class I directors shall be elected for a term of that will expire at the fourth annual meeting of stockholders following the initial classification of the Board of Directors. At the second annual meeting of stockholders following such initial classification, the term of office of the Class II directors shall expire and the Class II directors shall be elected for a term of that will expire at the fifth annual meeting of stockholders following the initial classification of the Board of Directors. At the third annual meeting of stockholders following such initial classification, the term of office of the Class III directors shall expire and the Class III directors shall be elected for a term of that will expire at the sixth annual meeting of stockholders following the initial classification of the Board of Directors. At each succeeding annual meeting of stockholders, directors shall be elected for a term that will expire at the third annual meeting of stockholders following such annual meeting to succeed the directors of the class whose terms expire at such annual meeting.

Notwithstanding the foregoing provisions of this Section, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

18. VACANCIES. Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by the stockholders; provided, however, that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected, and not by the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Section in the case of the death, removal or resignation of any director.

19. RESIGNATION. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, such resignation shall be deemed effective at the time of delivery to the Secretary. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

20. REMOVAL.

(a) Subject to the rights of any series of Preferred Stock to elect additional directors under specified circumstances, neither the Board of Directors nor any individual director may be removed without cause.

(b) Subject to any limitation imposed by law, any individual director or directors may be removed only with cause by the affirmative vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at a meeting of stockholders and entitled to vote generally on the election of directors, voting together as a single class.

21. MEETINGS.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of

Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by any member of the Board of Directors.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be given orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by U.S. mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

22. QUORUM AND VOTING.

(a) Unless the Certificate of Incorporation requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

23. ACTION WITHOUT MEETING. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

24. FEES AND COMPENSATION. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

25. COMMITTEES.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) and (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The

Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

26. LEAD INDEPENDENT DIRECTOR. The Chairman of the Board of Directors, or if the Chairman is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors (the ***"Lead Independent Director"***). The Lead Independent Director will: with the Chairman of the Board of Directors, establish the agenda for regular Board meetings and serve as chairman of Board of Directors meetings in the absence of the Chairman of the Board of Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and perform such other duties as may be established or delegated by the Chairman of the Board of Directors.

27. ORGANIZATION. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the Lead Independent Director, or if the Lead Independent Director is absent, the Chief Executive Officer (if a director), or, if the Chief Executive Officer is absent, the President (if a director), or if the President is absent, the

most senior Vice President (if a director), or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary or other officer or director directed to do so by the President, shall act as secretary of the meeting.

28. DUTIES OF CHAIRMAN OF THE BOARD OF DIRECTORS. The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

ARTICLE V
OFFICERS

29. OFFICERS DESIGNATED. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

30. TENURE AND DUTIES OF OFFICERS.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors or the Lead Independent Director has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of

Directors, the Lead Independent Director, or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(d) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer, or, if the Chief Executive Officer has not been appointed or is absent, the President shall designate from time to time.

(e) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(g) Duties of Treasurer. Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the chief financial officer of the

corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

31. DELEGATION OF AUTHORITY. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

32. RESIGNATIONS. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

33. REMOVAL. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI
EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

34. EXECUTION OF CORPORATE INSTRUMENTS. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

35. VOTING OF SECURITIES OWNED BY THE CORPORATION. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in

any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII
SHARES OF STOCK

36. FORM AND EXECUTION OF CERTIFICATES. The shares of the corporation shall be represented by certificates, or shall be uncertificated if so provided by resolution or resolutions of the Board of Directors. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

37. LOST CERTIFICATES. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner’s legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

38. TRANSFERS.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

39. FIXING RECORD DATES.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the

resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

40. REGISTERED STOCKHOLDERS. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII
OTHER SECURITIES OF THE CORPORATION

41. EXECUTION OF OTHER SECURITIES. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 36), may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered,

such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX
DIVIDENDS

42. DECLARATION OF DIVIDENDS. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

43. DIVIDEND RESERVE. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X
FISCAL YEAR

44. FISCAL YEAR. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI
INDEMNIFICATION

45. INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS.

(a) Directors and Officers. The corporation shall indemnify its directors and officers to the extent not prohibited by the DGCL or any other applicable law; provided, however, that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, provided, further, that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under paragraph (d) of this Section.

(b) Employees and Other Agents. The corporation shall have the power to indemnify its employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer, of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding; provided, however, that if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an ***"undertaking"***), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a ***"final adjudication"***) that such indemnitee is not entitled to be indemnified for such expenses under this Section or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Section to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a

director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because the officer or director has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Section or otherwise shall be on the corporation.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section.

(h) Amendments. Any repeal or modification of this Section shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Section that shall not have been invalidated, or by any other applicable law. If this Section shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and officer to the full extent under any other applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(i) The term ***"proceeding"*** shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term ***"expenses"*** shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term the ***"corporation"*** shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a ***"director"***, ***"officer"***, ***"employee"***, or ***"agent"*** of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to ***"other enterprises"*** shall include employee benefit plans; references to ***"fines"*** shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to ***"serving at the request of the corporation"*** shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner ***"not opposed to the best interests of the corporation"*** as referred to in this Section.

ARTICLE XII
NOTICES

46. NOTICES.

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for

purposes other than stockholder meetings may be sent by U.S. mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws, or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person With Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under the DGCL, any notice given under the provisions of the DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII
AMENDMENTS

47. AMENDMENTS. Subject to the limitations set forth in Section 45(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; provided, however, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV
LOANS TO OFFICERS OR EMPLOYEES

48. LOANS TO OFFICERS OR EMPLOYEES. Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

ARTICLE XV
AUSTRALIAN SECURITIES EXCHANGE LISTING RULES

49. AUSTRALIAN SECURITIES EXCHANGE LISTING RULES. While the corporation is on the official list of the Australian Securities Exchange, the following rules shall apply:

(a) notwithstanding anything contained in these Bylaws, if the official listing rules of the Australian Securities Exchange (the ***"Listing Rules"***) prohibit an act being done, the act shall not be done;

(b) nothing contained in these Bylaws prevents an act being done that the Listing Rules require to be done;

(c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);

(d) if the Listing Rules require these Bylaws to contain a provision and these Bylaws do not contain such a provision, these Bylaws shall be treated as containing that provision;

(e) if the Listing Rules require these Bylaws not to contain a provision and these Bylaws contain such a provision, these Bylaws shall be treated as not containing that provision; and

(f) if any provision of these Bylaws is or becomes inconsistent with the Listing Rules, these Bylaws shall be treated as not containing that provision to the extent of such inconsistency.

Incorporated under the Laws of

Number	*Delaware*	Shares
*COM-*** *(CDN Reference ***)*		*******

SUNSHINE HEART, INC.

*This certifies that *** is the record holder of *** (*******) shares of* ***Common Stock*** *of* ***Sunshine Heart, Inc.****, a Delaware corporation (the* ***"Corporation"****), transferable only on the books of the Corporation by the holder, in person, or by duly authorized attorney, upon surrender of this certificate properly endorsed or assigned.*

This certificate and the shares represented hereby are issued and shall be held subject to all the provisions of the Certificate of Incorporation and the Bylaws of the Corporation and any amendments thereto, a copy of each of which is on file at the office of the Corporation and made a part hereof as fully as though the provisions of the Certificate of Incorporation and Bylaws were imprinted in full on this Certificate, to all of which the holder of this certificate, by acceptance hereof, assents.

The Corporation will furnish without charge to each stockholder who so requests, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

*Witness the signatures of the Corporation's authorized officers this ** day of ***, 20**.*

, Secretary *, Chairman*

For Value Received, hereby sells, assigns and transfers unto

Shares represented by the within Certificate, and does hereby irrevocably constitute and appoint Attorney to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated

In presence of

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAW. NEITHER THIS SECURITY NOR ANY PORTION HEREOF OR INTEREST HEREIN MAY BE SOLD, ASSIGNED, TRANSFERRED, PLEDGED OR OTHERWISE DISPOSED OF UNLESS THE SAME IS REGISTERED UNDER SAID ACT AND ANY APPLICABLE STATE SECURITIES LAW, OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE AND THE COMPANY SHALL HAVE RECEIVED, AT THE EXPENSE OF THE HOLDER HEREOF, EVIDENCE OF SUCH EXEMPTION REASONABLY SATISFACTORY TO THE COMPANY (WHICH MAY INCLUDE, AMONG OTHER THINGS, AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY).

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT, OR ANY CHANGE WHATEVER.

(RESERVE THIS SPACE TO PASTE BACK CANCELLED STOCK CERTIFICATE)

Sunshine Heart, Inc.

IF NOT AN ORIGINAL ISSUE SHOW DETAILS OF TRANSFER BELOW

	Original Certificate		No.of	No. of
Transferred from	**No.**	**Date**	**Origl. Shares**	**Shares Transf'd**

Certificate No. COM-** For *** Shares of Common Stock

Dated: ***

Issued to: ***

IF THIS CERTIFICATE IS SURRENDERED FOR TRANSFER SHOW DETAILS

Date Certificate Received:

, 20

By

Date Certificate Surrendered:

New Certificate Issued to	No. of New Certificate	No. of Shares Transferred

SUNSHINE HEART, INC.
INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (this ***"Agreement"***) is made and entered into this 18th day of August, 2011 (the ***"Effective Date"***) by and between SUNSHINE HEART, INC., a Delaware corporation (the ***"Corporation"***), and , whose address is (***"Agent"***).

RECITALS

WHEREAS, Agent performs a valuable service to the Corporation in the capacity as a director, officer, employee or agent of the Corporation;

WHEREAS, the stockholders of the Corporation have adopted bylaws (the ***"Bylaws"***) and the Fourth Amended and Restated Certificate of Incorporation of the Corporation (the ***"Certificate"***) providing for the indemnification of the directors, officers, employees and other agents of the Corporation, including persons serving at the request of the Corporation in such capacities with other corporations or enterprises, as authorized by the Delaware General Corporation Law, as amended (the ***"Code"***);

WHEREAS, the Bylaws, the Certificate and the Code, by their non-exclusive nature, permit contracts between the Corporation and its directors, officers, employees and other agents with respect to indemnification of such persons; and

WHEREAS, in order to induce Agent to continue to serve as a director, officer, or employee of the Corporation, the Corporation has determined and agreed to enter into this Agreement with Agent.

NOW, THEREFORE, in consideration of Agent's continued service as a director, officer, employee or agent of the Corporation, the parties hereto agree as follows:

AGREEMENT

1. DEFINITIONS.

(a) Expenses. For purposes of this Agreement, the term ***"Expenses"*** shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys', witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature), actually and reasonably incurred by Agent in connection with the investigation, defense or appeal of a Proceeding or establishing or enforcing a right to indemnification under this Agreement, the Code or otherwise, and amounts paid in settlement by or on behalf of Agent, but shall not include any judgments, fines or penalties actually levied against Agent for such individual's violations of law. ***"Expenses"*** shall not, to the extent applicable under the laws of Australia, include any item in relation to which the Agent is not entitled to be indemnified.

(b) Change in Control. For purposes of this Agreement, a ***"Change in Control"*** shall be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the ***"Act"***)), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Corporation or a corporation owned directly or indirectly by the stockholders of the Corporation in substantially the same proportions as their ownership of stock of the Corporation, becomes the "beneficial owner" (as defined in Rule 13d-3 under said Act), directly or indirectly, of securities of the Corporation representing more than 20% of the total voting power represented by the Corporation's then outstanding Voting Securities; or (ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Corporation if, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Corporation immediately prior thereto do not own, directly or indirectly, either (A) outstanding Voting Securities representing more than 50% of the combined outstanding voting power of the surviving entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving entity in such merger, consolidation or similar transaction.

(c) Information. For the purposes of this Agreement, the term "***Information***" shall mean any information obtained pursuant to this Agreement and all or any part of information contained in or related to a transaction of the Company, a Board document or a discussion at a meeting of the Company.

(d) Proceeding. For purposes of this Agreement, the term ***"Proceeding"*** shall mean and shall include, without limitation, any threatened, pending, or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing, whether brought in the right of or by the Corporation or otherwise and whether of a civil, criminal, administrative or investigative nature, and whether formal or informal in any case, in which Agent was, is or will be involved as a party or otherwise by reason of the fact that: (i) Agent is or was a director, officer, employee or agent of the Corporation; (ii) Agent took an action while acting as director, officer, employee or agent of the Corporation; or (iii) Agent is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any Expense is incurred for which indemnification, reimbursement, or advancement of Expenses may be provided under this Agreement.

(e) Voting Securities. For purposes of this Agreement, ***"Voting Securities"*** shall mean any securities of the Corporation that vote generally in the election of directors.

2. SERVICES TO THE CORPORATION. Agent will serve, at the will of the Corporation or under separate contract, if any such contract exists, as a director, officer, or employee of the Corporation or as a director, officer or other fiduciary of an affiliate of the Corporation (including, but not limited to, any employee benefit plan of the Corporation) faithfully and to the best of Agent's ability so long as Agent is duly elected and qualified in accordance with the provisions of the Bylaws or other applicable charter documents of the Corporation or such affiliate; provided, however, that Agent may at any time and for any reason resign from such position (subject to any contractual obligation that Agent may be subject to apart from this Agreement) and that the Corporation or any affiliate shall have no obligation under this Agreement to continue Agent in any such position.

3. INDEMNITY OF AGENT. The Corporation hereby agrees to hold harmless and indemnify Agent to the fullest extent authorized or permitted by the provisions of the Bylaws, the Certificate, the laws of Australia (to the extent applicable) and the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than the Bylaws, the Certificate, the laws of Australia (to the extent applicable) or the Code permitted prior to adoption of such amendment) and to the extent Agent is not indemnified under the D&O Insurance (if any) maintained under clause 8. These obligations and the other obligations of the Corporation in this Agreement apply regardless of whether the conduct giving rise to the obligations occurred before or occur after the Effective Date.

4. PARTIAL INDEMNIFICATION. Agent shall be entitled under this Agreement to indemnification by the Corporation for a portion of the Expenses that Agent becomes legally obligated to pay in connection with any Proceeding even if not entitled hereunder to indemnification for the total amount thereof, and the Corporation shall indemnify Agent for the portion thereof to which Agent is entitled.

5. NOTIFICATION AND DEFENSE OF CLAIM. Not later than 30 days after receipt by Agent of notice of the commencement of any Proceeding, Agent will, if a claim in respect thereof is to be made against the Corporation under this Agreement, notify the Corporation of the commencement thereof; but the failure so to notify the Corporation will not relieve the Corporation from any liability which it may have to Agent under this Agreement or otherwise unless, and to the extent that, such failure actually and materially prejudices the interests of the Corporation. With respect to any such Proceeding as to which Agent notifies the Corporation of the commencement thereof:

(a) The Corporation will be entitled to participate therein at its own expense.

(b) Except as otherwise provided below, the Corporation may, at its option and jointly with any other indemnifying party similarly notified and electing to assume such defense, assume the defense thereof, with counsel reasonably satisfactory to Agent. After notice from the Corporation to Agent of its election to assume the defense thereof, (w) the Corporation will not be liable to Agent under this Agreement for any Expenses subsequently incurred by Agent in connection with the defense thereof except for reasonable costs of investigation or otherwise as provided below and (x) the Agent must take such action or provide such information as the Corporation reasonably require and (y) the Agent must assist the Corporation to the best of the Agent's abilities in any action the Corporation takes to avoid, defend or appeal any legal action connected with the claim or Proceeding and (z) the Agent must not admit any liability or settle any action connected to that claim or Proceeding without the prior consent of the Corporation, which consent must not be unreasonably withheld. Agent shall have the right to employ separate counsel in such Proceeding but the Expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Agent; provided, however, that the Expenses of Agent's separate counsel shall be borne by the Corporation if (i) the employment of counsel by Agent has been authorized by the Corporation,

(ii) Agent reasonably shall have concluded that there may be a conflict of interest between the Corporation and Agent in the conduct of the defense of such Proceeding, or (iii) the Corporation in fact shall not have employed counsel to assume the defense of such Proceeding or shall at any time have ceased to actively pursue the defense thereof. The Corporation shall not be entitled to assume the defense of any Proceeding brought by or on behalf of the Corporation or as to which Agent shall have made the conclusion provided for in clause (ii) above.

(c) The Corporation shall not be liable to indemnify Agent under this Agreement for any amounts paid in settlement of any Proceeding effected without its written consent, which shall not be unreasonably withheld or delayed. The Corporation shall be permitted to settle any Proceeding except that it shall not settle any Proceeding in any manner which would impose any penalty or limitation on Agent without Agent's written consent, which may be given or withheld in Agent's sole discretion.

6. EXPENSES. Promptly following a request by Agent for the advancement of Expenses, the Corporation shall advance, prior to the final disposition of any Proceeding, all Expenses incurred by Agent in connection with such Proceeding upon receipt of an undertaking by or on behalf of Agent to repay such amounts if it shall ultimately be determined by a final judicial decision from which there is no further right of appeal that Agent is not entitled to be indemnified.

7. ENFORCEMENT. Any right to indemnification or advances granted by this Agreement to Agent shall be enforceable by or on behalf of Agent in any court of competent jurisdiction if (a) the claim for indemnification or advances is denied, in whole or in part, or (b) no disposition of such claim is made within 90 days of request therefor. Agent, in such enforcement action, if successful in whole or in part, also shall be entitled to be paid the Expense of prosecuting Agent's claim. Neither the failure of the Corporation (including its Board of Directors or its stockholders) to have made a determination prior to the commencement of such enforcement action that indemnification of Agent is proper in the circumstances, nor an actual determination by the Corporation (including its Board of Directors or its stockholders) that such indemnification is improper shall be a defense to the action or create a presumption that Agent is not entitled to indemnification under this Agreement or otherwise.

8. INSURANCE.

(a) Unless otherwise approved by the Board of Directors prior to a Change in Control, the Corporation shall obtain and maintain during the term of this Agreement directors' and officers' liability insurance (***"D&O Insurance"***) with respect to which Agent shall be named as an insured. Notwithstanding any other provision of this Agreement, the Corporation shall not be obligated to indemnify Agent for Expenses which have been previously paid directly to Agent by D&O Insurance. If the Corporation has D&O Insurance in effect at the time the Corporation receives from Agent any notice of the commencement of a Proceeding, the Corporation shall give prompt notice of the commencement of such Proceeding to the insurers in accordance with the procedures set forth in the policy. The Corporation shall thereafter take all reasonably necessary action to cause such insurers to pay, on behalf of Agent, all amounts payable as a result of such Proceeding in accordance with the terms of such policy.

(b) In the event that (i) the D&O Insurance policy is renewed but the renewed policy does not provide coverage for prior acts, or (ii) the Corporation obtains a new D&O Insurance policy for any period following the termination of the prior D&O Insurance, and such new D&O Insurance policy does not provide coverage for prior acts, or (iii) the Corporation does not renew the D&O Insurance policy or obtain a new D&O Insurance policy following the termination of a D&O Insurance policy, then unless otherwise determined by the Board of Directors, the Corporation shall add to the D&O Insurance policy or the applicable successor D&O Insurance policy a run-off endorsement (the ***"Endorsement"***) on the existing D&O Insurance policy or the applicable successor D&O Insurance policy subject to the same terms and conditions in all material respects. Unless otherwise approved by the Board of Directors prior to the date on which the Endorsement is obtained, the Endorsement shall be non-cancelable and shall provide for at least a six-year extended coverage period for any and all claims covered under the D&O Insurance policy. The Corporation shall pay all premiums, commissions and other costs or charges incurred in obtaining the Endorsement and shall promptly deliver to Agent a Certificate of Confirmation of Insurance with respect to such Endorsement.

9. SUBROGATION. In the event of payment under this Agreement, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of Agent, who shall execute all documents required and shall do all acts that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

10. CONFIDENTIALITY.

(a) Without limiting the Agent's duties to the Corporation, the Agent must keep all Information confidential.

(b) The obligation of confidentiality set out in clause 10(a) will continue to apply after the termination of this agreement but will cease to apply to:

(i) Information which comes into the public domain;

(ii) Information in respect of which disclosure is required by law; or

(iii) Information which must be disclosed for the purpose of bona fide court proceedings that arise out of the Agent's involvement with the Corporation, provided that:

(1) the Corporation has waived any claim to client legal privilege; and

(2) disclosure will not cause the Corporation's right to claim client legal privilege in regard to any other Information to be waived.

(c) The Agent may only disclose Information under clause 10(b)(iii) to persons who have a need to know for the purpose of the court proceedings and only to the extent that each has a need to know.

(d) Subject to clause 10(e), on ceasing to be a director, officer, employee or agent of the Corporation, the Agent must deliver all board documents (if any) to the company secretary of the Corporation for destruction.

(e) The obligations in clause 10(d) are subject to the Agent's right to retain any specific board document necessary for the purpose of taking any action relating to any claim against the Agent which is current or contemplated.

(f) Any board document and any copies retained under clause 10(e) must be returned to the company secretary of the Corporation for destruction as soon as possible after they are no longer required for that purpose.

11. NON-EXCLUSIVITY AND SURVIVAL OF RIGHTS.

(a) All agreements and obligations of the Corporation contained herein shall continue during the period Agent is a director, officer, employee or other agent of the Corporation (or is or was serving at the request of the Corporation as a director, officer, employee or other agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise) and shall continue thereafter so long as Agent shall be subject to any possible Proceeding. The benefits hereunder shall inure to the benefit of the heirs, executors and administrators and assigns of Agent. The rights conferred on Agent by this Agreement shall not be exclusive of any other right Agent may have or hereafter acquire under any statute, provision of the Certificate or Bylaws, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in Agent's official capacity and as to action in another capacity while holding office.

(b) The obligations and duties of the Corporation to Agent under this Agreement shall be binding on the Corporation and its successors and assigns until terminated in accordance with its terms. The Corporation shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to the Corporation or to all or substantially all of the business or assets of the Corporation, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place.

(c) No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Agent under this Agreement in respect of any action taken or omitted by such Agent prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Certificate, Bylaws and this Agreement, it is the intent of the parties hereto that Agent shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Agent shall not prevent the concurrent assertion or employment of any other right or remedy by Agent.

12. SEVERABILITY. Each of the provisions of this Agreement is a separate and distinct agreement and independent of the others, so that if any provision hereof shall be held to be invalid for any reason, such invalidity contained herein or unenforceability shall not affect the validity or enforceability of the other provisions hereof. Furthermore, if this Agreement shall be invalidated in its entirety on any ground, then the Corporation nevertheless shall indemnify Agent to the fullest extent provided by the Certificate, Bylaws, the Code or any other applicable law.

13. GOVERNING LAW. This Agreement shall be governed exclusively by and construed according to the laws of the State of Minnesota, as applied to contracts between Minnesota residents entered into and to be performed entirely within Minnesota.

14. AMENDMENT, MODIFICATION, WAIVER AND TERMINATION. No amendment, modification, termination or cancellation of this Agreement shall be effective unless signed in writing by both parties hereto; provided, however, that the Corporation shall have the right to amend, modify, terminate or replace this Agreement if: (a) there is a change in the Code or any other applicable law; or (b) the Corporation amends, modifies, terminates or replaces its form of Indemnification Agreement for directors, officers, employees and other agents of the Corporation, provided that such amended or modified agreement or such new agreement does not diminish in any material respect the rights of Agent hereunder. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

15. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Certificate, Bylaws, the Code and any other applicable law, and shall not be deemed a substitute therefore, nor to diminish or abrogate any rights of Agent thereunder.

16. INTERPRETATION OF AGREEMENT. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Agent to the fullest extent now or hereafter permitted by the laws of Minnesota and, to the extent applicable, the laws of Australia.

17. COUNTERPARTS. This Agreement may be executed in one or more counterparts and either originally or by facsimile signature, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

18. HEADINGS. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

19. NOTICES. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (y) upon delivery, if delivered by hand to the party to whom such communication was directed; or (z) upon the third business day

after the date on which such communication was mailed, if mailed by certified or registered mail with postage prepaid:

(a) if to Agent, at the address set forth in the introductory paragraph of this Agreement;

(b) if to the Corporation, to

Attn: Dave Rosa
Sunshine Heart, Inc.
7651 Anagram Drive
Eden Prairie, Minnesota 55344;

or to such other address as may have been furnished to Agent by the Corporation, or to such other address as Agent may direct in writing the Corporation to use.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

THE CORPORATION: **AGENT:**

SUNSHINE HEART, INC.

By: ______________________ ______________________
Name: ______________________ **INSERT NAME**
Title: ______________________

SUNSHINE HEART, INC.

AMENDED AND RESTATED 2002 STOCK PLAN
Amended August 16, 2004 (California time)

1. **Purposes of the Plan.** The purposes of this 2002 Stock Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees and Consultants and to promote the success of the Company's business. Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant of an option and subject to the applicable provisions of Section 422 of the Code and the regulations and interpretations promulgated thereunder. Stock purchase rights may also be granted under the Plan.

2. **Definitions.** As used herein, the following definitions shall apply:

(a) **"Administrator"** means the Board or its Committee appointed pursuant to Section 4 of the Plan.

(b) **"Affiliate"** means an entity other than a Subsidiary (as defined below) which, together with the Company, is under common control of a third person or entity.

(c) **"Applicable Laws"** means the legal requirements relating to the administration of stock option and restricted stock purchase plans under applicable U.S. state corporate laws, U.S. federal and applicable state securities laws, the Code, the Listing Rules, any other Stock Exchange rules or regulations and the applicable laws of any other country or jurisdiction where Options or Stock Purchase Rights are granted under the Plan, as such laws, rules, regulations and requirements shall be in place from time to time.

(cc) "**ASX**" means Australian Stock Exchange Limited ABN 98 008 624 691 or any successor body.

(d) **"Board"** means the Board of Directors of the Company.

(e) **"Cause"** for termination of a Participant's Continuous Service Status will exist if the Participant is terminated by the Company for any of the following reasons: (i) Participant's willful failure substantially to perform his or her duties and responsibilities to the Company or deliberate violation of a Company policy; (ii) Participant's commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company; (iii) unauthorized use or disclosure by Participant of any proprietary information or trade secrets of the Company or any other party to whom the Participant owes an obligation of nondisclosure as a result of his or her relationship with the Company; or (iv) Participant's willful breach of any of his or her obligations under any written agreement or covenant with the Company. The determination as to whether a Participant is being terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Participant. The foregoing definition does not in any way limit the Company's ability to terminate a Participant's employment or consulting relationship at any time as provided

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in Section 5(d) below, and the term "Company" will be interpreted to include any Subsidiary, Parent or Affiliate, as appropriate.

(f) "**Change of Control**" means any: (i) sale of all or substantially all of the Company's assets, or any (ii) merger, consolidation or other transaction or series of related transactions, in each case in which the Company's stockholders immediately prior thereto own less than fifty percent (50%) of the voting stock of the Company (or its successor or parent) immediately thereafter, provided however that none of the following shall be considered a Change of Control: (i) a merger effected exclusively for the purpose of changing the domicile of the Company or (ii) an equity financing in which the Company is the surviving corporation.

(g) **"Code"** means the Internal Revenue Code of 1986, as amended.

(h) **"Committee"** means one or more committees or subcommittees of the Board appointed by the Board to administer the Plan in accordance with Section 4 below.

(i) **"Common Stock"** means the Common Stock of the Company.

(j) **"Company"** means Sunshine Heart, Inc., a Delaware corporation.

(k) **"Consultant"** means any person, including an advisor, who is engaged by the Company or any Parent, Subsidiary or Affiliate to render services and is compensated for such services, and any director of the Company whether compensated for such services or not.unshi

(l) **"Continuous Service Status"** means the absence of any interruption or termination of service as an Employee or Consultant. Continuous Service Status as an Employee or Consultant shall not be considered interrupted in the case of: (i) sick leave; (ii) military leave; (iii) any other leave of absence approved by the Administrator, provided that such leave is for a period of not more than ninety (90) days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute, or unless provided otherwise pursuant to Company policy adopted from time to time; or (iv) in the case of transfers between locations of the Company or between the Company, its Parents, Subsidiaries, Affiliates or their respective successors. A change in status from an Employee to a Consultant or from a Consultant to an Employee will not constitute an interruption of Continuous Service Status.

(m) **"Corporate Transaction"** means a sale of all or substantially all of the Company's assets, or a merger, consolidation or other capital reorganization of the Company with or into another corporation, entity or person, and includes a Change of Control.

(n) **"Director"** means a member of the Board.

(o) **"Employee"** means any person employed by the Company or any Parent, Subsidiary or Affiliate, with the status of employment determined based upon such factors as are deemed appropriate by the Administrator in its discretion, subject to any requirements of the Code or the

Applicable Laws. The payment by the Company of a director's fee to a Director shall not be sufficient to constitute "employment" of such Director by the Company.

(p) **"Exchange Act"** means the Securities Exchange Act of 1934, as amended.

(q) **"Fair Market Value"** means, as of any date, the fair market value of the Common Stock, as determined by the Administrator in good faith on such basis as it deems appropriate and applied consistently with respect to Participants. Whenever possible, the determination of Fair Market Value shall be based upon the closing price for the Shares on the ASX or as reported in the Wall Street Journal, as applicable, for the relevant date.

(r) **"Incentive Stock Option"** means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code, as designated in the applicable Option Agreement.

(rr) "**Listed**" means having been admitted to the Official List of ASX and at the relevant time still being so admitted.

(s) "**Listed Security**" means any security of the Company that is listed or approved for listing on a national securities exchange in the United States or designated or approved for designation as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.

(ss) "**Listing Rules**" means the Listing Rules of ASX and any other rules of ASX which are applicable while the Company is listed, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

(t) **"Named Executive"** means any individual who, on the last day of the Company's fiscal year, is the chief executive officer of the Company (or is acting in such capacity) or among the four most highly compensated officers of the Company (other than the chief executive officer). Such officer status shall be determined pursuant to the executive compensation disclosure rules under the Exchange Act.

(u) **"Nonstatutory Stock Option"** means an Option not intended to qualify as an Incentive Stock Option, as designated in the applicable Option Agreement.

(uu) "**Official List**" has the meaning given in the Listing Rules.

(v) **"Option"** means a stock option granted pursuant to the Plan.

(w) **"Option Agreement"** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of an Option granted under the Plan and includes any documents attached to or incorporated into such Option Agreement, including, but not limited to, a notice of stock option grant and a form of exercise notice.

(x) **"Optioned Stock"** means the Common Stock subject to an Option.

(y) **"Optionee"** means an Employee or Consultant who receives an Option.

(z) **"Parent"** means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code, or any successor provision.

(aa) **"Participant"** means any holder of one or more Options or Stock Purchase Rights, or the Shares issuable or issued upon exercise of such awards, under the Plan.

(bb) **"Plan"** means this 2002 Stock Plan.

(cc) **"Reporting Person"** means an officer, Director, or greater than ten percent stockholder of the Company within the meaning of Rule 16a-2 under the Exchange Act, who is required to file reports pursuant to Rule 16a-3 under the Exchange Act.

(dd) **"Restricted Stock"** means Shares of Common Stock acquired pursuant to a grant of a Stock Purchase Right under Section 11 below.

(ee) **"Restricted Stock Purchase Agreement"** means a written document, the form(s) of which shall be approved from time to time by the Administrator, reflecting the terms of a Stock Purchase Right granted under the Plan and includes any documents attached to such agreement.

(ff) **"Rule 16b-3"** means Rule 16b-3 promulgated under the Exchange Act, as amended from time to time, or any successor provision.

(gg) **"Share"** means a share of the Common Stock, as adjusted in accordance with Section 13 of the Plan.

(hh) **"Stock Exchange"** means any stock exchange or consolidated stock price reporting system on which prices for the Common Stock are quoted at any given time and includes ASX.

(ii) **"Stock Purchase Right"** means the right to purchase Common Stock pursuant to Section 11 below.

(jj) **"Subsidiary"** means a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code, or any successor provision.

(kk) **"Ten Percent Holder"** means a person who owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary.

3. **Stock Subject to the Plan.** Subject to the provisions of Section 13 of the Plan, and at all times to the maximum number of Options which are permitted to be subject to the Plan under the Listing Rules or any class order applicable to the Plan made by the Australian Securities and Investments Commission, the maximum aggregate number of Shares that may be sold under the Plan is 6,204,797 Shares of Common Stock (before giving effect to the Company's proposed 1.94:1 stock split). The Shares may be authorized, but unissued, or reacquired Common Stock. If an award should expire or become unexercisable for any reason without

having been exercised in full, the unpurchased Shares that were subject thereto shall, unless the Plan shall have been terminated, become available for future grant under the Plan. In addition, any Shares of Common Stock which are retained by the Company upon exercise of an award in order to satisfy the exercise or purchase price for such award or any withholding taxes due with respect to such exercise or purchase shall be treated as not issued and shall continue to be available under the Plan. Shares issued under the Plan and later repurchased by the Company pursuant to any repurchase right which the Company may have shall not be available for future grant under the Plan.

4. **Administration of the Plan**.

(a) **General.** The Plan shall be administered by the Board or a Committee, or a combination thereof, as determined by the Board. The Plan may be administered by different administrative bodies with respect to different classes of Participants and, if permitted by the Applicable Laws, the Board may authorize one or more officers to make awards under the Plan.

(b) **Committee Composition.** If a Committee has been appointed pursuant to this Section 4, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of any Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of a Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws and, in the case of a Committee administering the Plan in accordance with the requirements of Rule 16b-3 or Section 162(m) of the Code, to the extent permitted or required by such provisions.

(c) **Powers of the Administrator.** Subject to the Listing Rules, the provisions of the Plan and in the case of a Committee, the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(q) of the Plan, provided that such determination shall be applied consistently with respect to Participants under the Plan;

(ii) to select the Employees and Consultants to whom Plan awards may from time to time be granted;

(iii) to determine whether and to what extent Plan awards are granted;

(iv) to determine the number of Shares of Common Stock to be covered by each award granted;

(v) to approve the form(s) of agreement(s) used under the Plan;

(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder, which terms and conditions include but are not limited to the exercise or purchase price, the time or times when awards may be exercised

(which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, any pro rata adjustments to vesting as a result of a Participant's transitioning from full- to part-time service (or vice versa), and any restriction or limitation regarding any Option, Optioned Stock, Stock Purchase Right or Restricted Stock, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to determine whether and under what circumstances an Option may be settled in cash under Section 9(c)instead of Common Stock;

(viii)

(xiii) to adjust the vesting of an Option held by an Employee or Consultant as a result of a change in the terms or conditions under which such person is providing services to the Company;

(ix) to construe and interpret the terms of the Plan and awards granted under the Plan, which constructions, interpretations and decisions shall be final and binding on all Participants; and

(x) in order to fulfill the purposes of the Plan and without amending the Plan, to modify grants of Options or Stock Purchase Rights to Participants who are foreign nationals or employed outside of the United States in order to recognize differences in local law, tax policies or customs.

5. **Eligibility**.

(a) **Recipients of Grants.** Nonstatutory Stock Options and Stock Purchase Rights may be granted to Employees and Consultants. Incentive Stock Options may be granted only to Employees, provided that Employees of Affiliates shall not be eligible to receive Incentive Stock Options.

(b) **Type of Option.** Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option.

(c) **ISO $100,000 Limitation.** Notwithstanding any designation under Section 5(b), to the extent that the aggregate Fair Market Value of Shares with respect to which Options designated as Incentive Stock Options are exercisable for the first time by any Optionee during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds $100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 5(c), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares subject to an Incentive Stock Option shall be determined as of the date of the grant of such Option.

(d) **No Employment Rights.** The Plan shall not confer upon any Participant any right with respect to continuation of an employment or consulting relationship with the Company, nor shall it interfere in any way with such Participant's right or the Company's right to terminate the employment or consulting relationship at any time for any reason.

6. **Term of Plan.** The Plan shall become effective upon its adoption by the Board of Directors. It shall continue in effect for a term of ten (10) years unless sooner terminated under Section 16 of the Plan.

7. **Term of Option.** The term of each Option shall be the term stated in the Option Agreement; provided that the term shall be no more than ten years from the date of grant thereof or such shorter term as may be provided in the Option Agreement and provided further that, in the case of an Incentive Stock Option granted to a person who at the time of such grant is a Ten Percent Holder, the term of the Option shall be five years from the date of grant thereof or such shorter term as may be provided in the Option Agreement.

8. **Option Exercise Price and Consideration.**

(a) **Exercise Price.** The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be such price as is determined by the Administrator and set forth in the Option Agreement, but shall be subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any other Employee, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option

(A) granted on any date on which the Common Stock is not a Listed Security to a person who is at the time of grant is a Ten Percent Holder, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant if required by the Applicable Laws and, if not so required, shall be such price as is determined by the Administrator;

(B) granted on any date on which the Common Stock is not a Listed Security to any other eligible person, the per Share exercise price shall be no less than 85% of the Fair Market Value per Share on the date of grant if required by the Applicable Laws and, if not so required, shall be such price as is determined by the Administrator; or

(C) granted on any date on which the Common Stock is a Listed Security to any eligible person, the per share Exercise Price shall be such price as determined by the Administrator provided that if such eligible person is, at the time of the grant of such Option, a Named Executive of the Company, the per share Exercise Price shall be no less than 100% of the Fair Market Value on the date of grant if such Option is intended to qualify as performance-based compensation under Section 162(m) of the Code.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price other than as required above pursuant to a merger or other corporate transaction.

(b) **Permissible Consideration.** The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator at the time of grant and as allowed by Applicable Laws.. .

9. **Exercise of Option.**

(a) **General.**

(i) **Exercisability.** Any Option granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator, consistent with the term of the Plan and reflected in the Option Agreement, including vesting requirements and/or performance criteria with respect to the Company and/or the Optionee; provided however that, if required by the Applicable Laws, any Option granted on a date on which the Common Stock is not a Listed Security shall become exercisable at the rate of at least 20% per year over five years from the date the Option is granted. In the event that any of the Shares issued upon exercise of an Option (which exercise occurs on a date on which the Common Stock is not a Listed Security) should be subject to a right of repurchase in the Company's favor, such repurchase right shall, if required by the Applicable Laws, lapse at the rate of at least 20% per year over five years from the date the Option is granted. Notwithstanding the above, in the case of an Option granted to an officer, Director or Consultant of the Company or any Parent, Subsidiary or Affiliate of the Company, the Option may become fully exercisable, or a repurchase right, if any, in favor of the Company shall lapse, at any time or during any period established by the Administrator.

(ii) **Leave of Absence.** The Administrator shall have the discretion to determine whether and to what extent the vesting of Options shall be tolled during any unpaid leave of absence. In the event of military leave, vesting shall toll during any unpaid portion of such leave, provided that, upon a Participant's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given vesting credit with respect to Options to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(iii) **Minimum Exercise Requirements.** An Option may not be exercised for a fraction of a Share. The Administrator may require that an Option be exercised as to a minimum number of Shares, provided that such requirement shall not prevent an Optionee from exercising the full number of Shares as to which the Option is then exercisable.

(iv) **Procedures for and Results of Exercise.** An Option shall be deemed exercised when written notice of such exercise has been given to the Company in accordance with the terms of the Option by the person entitled to exercise the Option and the Company has received full payment for the Shares with respect to which the Option is exercised.

Full payment may, as authorized by the Administrator, consist of any consideration and method of payment allowable under Section 9(b) of the Plan, provided that the Administrator may, in its sole discretion, refuse to accept any form of consideration at the time of any Option exercise.

Exercise of an Option in any manner shall result in a decrease in the number of Shares that thereafter may be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(v) **Rights as Stockholder.** Until the issuance of the Shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or to participate in any new issues of Shares, or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 13 of the Plan.

(b) **Termination of Employment or Consulting Relationship.** Except as otherwise set forth in this Section 10(b), the Administrator shall establish and set forth in the applicable Option Agreement the terms and conditions upon which an Option shall remain exercisable, if at all, following termination of an Optionee's Continuous Service Status, which provisions may be waived or modified by the Administrator at any time. Unless the Administrator otherwise provides in the Option Agreement, to the extent that the Optionee is not vested in Optioned Stock at the date of termination of his or her Continuous Service Status, or if the Optionee (or other person entitled to exercise the Option) does not exercise the Option to the extent so entitled within the time specified in the Option Agreement or below (as applicable), the Option shall terminate and the Optioned Stock underlying the unexercised portion of the Option shall revert to the Plan. In no event may any Option be exercised after the expiration of the Option term as set forth in the Option Agreement (and subject to Section 7).

The following provisions (1) shall apply to the extent an Option Agreement does not specify the terms and conditions upon which an Option shall terminate upon termination of an Optionee's Continuous Service Status, and (2) establish the minimum post-termination exercise periods that may be set forth in an Option Agreement:

(i) **Termination other than Upon Disability or Death or for Cause.** In the event of termination of an Optionee's Continuous Service Status, such Optionee may exercise an Option for 30 days following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination. No termination shall be deemed to occur and this Section 10(b)(i) shall not apply if (i) the Optionee is a Consultant who becomes an Employee, or (ii) the Optionee is an Employee who becomes a Consultant.

(ii) **Disability of Optionee.** In the event of termination of an Optionee's Continuous Service Status as a result of his or her disability (including a disability within the meaning of Section 22(e)(3) of the Code), such Optionee may exercise an Option at any time within six months following such termination to the extent the Optionee was vested in the Optioned Stock as of the date of such termination.

(iii) **Death of Optionee.** In the event of the death of an Optionee during the period of Continuous Service Status since the date of grant of the Option, or within thirty days following termination of Optionee's Continuous Service Status, the Option may be exercised by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance at any time within twelve months following the date of death, but only to the extent the Optionee was vested in the Optioned Stock as of the date of death or, if earlier, the date the Optionee's Continuous Service Status terminated.

(c) **Buyout Provisions.** The Administrator may at any time offer to buy out for a payment in cash or Shares an Option previously granted under the Plan based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

10. **Stock Purchase Rights**.

(a) **Rights to Purchase.** When the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing of the terms, conditions and restrictions related to the offer, including the number of Shares that such person shall be entitled to purchase, the price to be paid, and the time within which such person must accept such offer. In the case of a Stock Purchase Right granted prior to the date, if any, on which the Common Stock becomes a Listed Security and if required by the Applicable Laws at that time, the purchase price of Shares subject to such Stock

Purchase Rights shall not be less than 85% of the Fair Market Value of the Shares as of the date of the offer, or, in the case of a Ten Percent Holder, the price shall not be less than 100% of the Fair Market Value of the Shares as of the date of the offer. If the Applicable Laws do not impose the requirements set forth in the preceding sentence and with respect to any Stock Purchase Rights granted after the date, if any, on which the Common Stock becomes a Listed Security, the purchase price of Shares subject to Stock Purchase Rights shall be as determined by the Administrator. The offer to purchase Shares subject to Stock Purchase Rights shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) **Repurchase Option**.

(i) **General.** Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's employment with the Company for any reason (including death or disability). The purchase price for Shares repurchased pursuant to the Restricted Stock Purchase Agreement shall be the original purchase price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company. The repurchase option shall lapse at such rate as the Administrator may determine, provided that with respect to a Stock Purchase Right granted prior to the date, if any, on which the Common Stock becomes a Listed Security to a purchaser who is not an officer, Director or Consultant of the Company or of any Parent or Subsidiary of the Company, it shall lapse at a minimum rate of 20% per year if required by the Applicable Laws.

(ii) **Leave of Absence.** The Administrator shall have the discretion to determine whether and to what extent the lapsing of Company repurchase rights shall be tolled during any unpaid leave of absence. In the event of military leave, the lapsing of Company repurchase rights shall toll during any unpaid portion of such leave, provided that, upon a Participant's returning from military leave (under conditions that would entitle him or her to protection upon such return under the Uniform Services Employment and Reemployment Rights Act), he or she shall be given "vesting" credit with respect to Shares purchased pursuant to the Restricted Stock Purchase Agreement to the same extent as would have applied had the Participant continued to provide services to the Company throughout the leave on the same terms as he or she was providing services immediately prior to such leave.

(iii) **Termination for Cause.** In the event of termination of a Participant's Continuous Service Status for Cause, the Company shall have the right to repurchase from the Participant vested Shares issued upon exercise of a Stock Purchase Right granted to any person other than an officer, Director or Consultant prior to the date, if any, upon which the Common Stock becomes a Listed Security upon the following terms: (A) the repurchase must be made within 90 days of termination of the Participant's Continuous Service Status for Cause at the Fair Market Value of the Shares as of the date of termination, (B) consideration for the repurchase consists of cash or cancellation of purchase money indebtedness, and (C) the repurchase right terminates upon the effective date of the Company's initial public offering of its Common Stock. With respect to vested Shares issued upon exercise of a Stock Purchase Right granted to any officer, Director or Consultant, the Company's right to repurchase such Shares upon termination of such Participant's Continuous Service Status for Cause shall be made at the Participant's original cost for the Shares and shall be effected pursuant to such terms and conditions, and at such time, as the Administrator shall determine. Nothing in this Section 11(b)(iii) shall in any way limit the Company's right to purchase unvested Shares as set forth in the applicable Restricted Stock Purchase Agreement.

(c) **Other Provisions.** The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Restricted Stock Purchase Agreements need not be the same with respect to each purchaser.

(d) **Rights as a Stockholder.** Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a stockholder, and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 13 of the Plan.

11. **Taxes**.

(a) As a condition of the exercise of an Option or Stock Purchase Right granted under the Plan, the Participant (or in the case of the Participant's death, the person exercising the Option or Stock Purchase Right) shall make such arrangements as the Administrator may require for the satisfaction of any applicable federal, state, local or foreign

withholding tax obligations that may arise in connection with the exercise of the Option or Stock Purchase Right and the issuance of Shares. The Company shall not be required to issue any Shares under the Plan until such obligations are satisfied. If the Administrator allows the withholding or surrender of Shares to satisfy a Participant's tax withholding obligations under this Section 12 (whether pursuant to Section 12(c), (d) or (e), or otherwise), the Administrator shall not allow Shares to be withheld in an amount that exceeds the minimum statutory withholding rates for federal and state tax purposes, including payroll taxes.

(b) In the case of an Employee and in the absence of any other arrangement, the Employee shall be deemed to have directed the Company to withhold or collect from his or her compensation an amount sufficient to satisfy such tax obligations from the next payroll payment otherwise payable after the date of an exercise of the Option or Stock Purchase Right.

(c) This Section 12(c) shall apply only after the date, if any, upon which the Common Stock becomes a Listed Security. In the case of Participant other than an Employee (or in the case of an Employee where the next payroll payment is not sufficient to satisfy such tax obligations, with respect to any remaining tax obligations), in the absence of any other arrangement and to the extent permitted under the Applicable Laws, the Participant shall be deemed to have elected to have the Company withhold from the Shares to be issued upon exercise of the Option or Stock Purchase Right that number of Shares having a Fair Market Value determined as of the applicable Tax Date (as defined below) equal to the amount required to be withheld. For purposes of this Section 12, the Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined under the Applicable Laws (the "Tax Date").

(d) If permitted by the Administrator, in its discretion, a Participant may satisfy his or her tax withholding obligations upon exercise of an Option or Stock Purchase Right by surrendering to the Company Shares that have a Fair Market Value determined as of the applicable Tax Date equal to the amount required to be withheld. In the case of shares previously acquired from the Company that are surrendered under this Section 12(d), such Shares must have been owned by the Participant for more than six (6) months on the date of surrender (or such other period of time as is required for the Company to avoid adverse accounting charges).

(e) Any election or deemed election by a Participant to have Shares withheld to satisfy tax withholding obligations under Section 12(c) or (d) above shall be irrevocable as to the particular Shares as to which the election is made and shall be subject to the consent or disapproval of the Administrator. Any election by a Participant under Section 12(d) above must be made on or prior to the applicable Tax Date.

(f) In the event an election to have Shares withheld is made by a Participant and the Tax Date is deferred under Section 83 of the Code because no election is filed under Section 83(b) of the Code, the Participant shall receive the full number of Shares with respect to which the Option or Stock Purchase Right is exercised but such Participant shall be unconditionally obligated to tender back to the Company the proper number of Shares on the Tax Date.

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12. **Non-Transferability of Options and Stock Purchase Rights.**

(a) **General.** Except as set forth in this Section 12, Options and Stock Purchase Rights may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution. The designation of a beneficiary by an Optionee will not constitute a transfer. An Option or Stock Purchase Right may be exercised, during the lifetime of the holder of an Option or Stock Purchase Right, only by such holder or a transferee permitted by this Section 12.

(b) **Limited Transferability Rights.** Notwithstanding anything else in this Section 12, the Administrator may in its discretion grant Nonstatutory Stock Options that may be transferred by instrument to an inter vivos or testamentary trust in which the Options are to be passed to beneficiaries upon the death of the trustor (settlor) or by gift or pursuant to domestic relations orders to “Immediate Family Members” (as defined below) of the Optionee. “Immediate Family” means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law (including adoptive relationships), a trust in which these persons have more than fifty percent of the beneficial interest, a foundation in which these persons (or the Optionee) control the management of assets, and any other entity in which these persons (or the Optionee) own more than fifty percent of the voting interests.

13. **Adjustments Upon Changes in Capitalization, Merger or Certain Other Transactions**.

(a) **Changes in Capitalization.** Subject to any Applicable Laws and any action required under those Applicable Laws by the stockholders of the Company, the number of Shares of Common Stock covered by each outstanding award, the numbers of Shares set forth in Sections 3, and the number of Shares of Common Stock that have been authorized for issuance under the Plan but as to which no awards have yet been granted or that have been returned to the Plan upon cancellation or expiration of an award, as well as the price per Share of Common Stock covered by each such outstanding award and any other rights of an Optionee, shall be proportionately adjusted, and otherwise changed to the extent necessary to comply with the Listing Rules applying to a reorganization of capital at the relevant time, for any increase or decrease in the number of issued Shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, bonus issue of Shares, combination, recapitalization or reclassification of the Common Stock, or any other increase or decrease in the number of issued Shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been “effected without receipt of consideration.” If the Company makes a bonus issue of Shares or other securities pro rata to holders of Shares (other than an issue in lieu of dividends or by way of dividend reinvestment) and no Shares have been allotted in respect of an Option before the books closing date for determining entitlements to the bonus issue then that Option, if exercised, will entitle the Optionee to receive the bonus issue in respect of the Shares resulting from exercise of the Option as if the Option had been exercised and the Shares allotted before the books closing date. If the Company undertakes a rights issue the exercise price of the Options will be adjusted in accordance with the formula contained in the Listing Rules. Such adjustment

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shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares of Common Stock subject to an award.

(b) **Dissolution or Liquidation.** In the event of the dissolution or liquidation of the Company, each Option and Stock Purchase Right will terminate immediately prior to the consummation of such action, unless otherwise determined by the Administrator.

(c) **Corporate Transaction.** In the event of a Corporate Transaction, subject to any Listing Rules requirements, each outstanding Option or Stock Purchase Right shall be assumed or an equivalent option or right shall be substituted by such successor corporation or a parent or subsidiary of such successor corporation (the “Successor Corporation”), unless the Successor Corporation does not agree to assume the award or to substitute an equivalent option or right, in which case such Option or Stock Purchase Right shall terminate upon the consummation of the transaction.

For purposes of this Section 13(c), an Option or a Stock Purchase Right shall be considered assumed, without limitation, if, at the time of issuance of the stock or other consideration upon a Corporate Transaction or a Change of Control, as the case may be, each holder of an Option or Stock Purchase Right would be entitled to receive upon exercise of the award the same number and kind of shares of stock or the same amount of property, cash or securities as such holder would have been entitled to receive upon the occurrence of the transaction if the holder had been, immediately prior to such transaction, the holder of the number of Shares of Common Stock covered by the award at such time (after giving effect to any adjustments in the number of Shares covered by the Option or Stock Purchase Right as provided for in this Section 13); provided that if such consideration received in the transaction is not solely common stock of the Successor Corporation, the Administrator may, with the consent of the Successor Corporation, provide for the consideration to be received upon exercise of the award to be solely common stock of the Successor Corporation equal to the Fair Market Value of the per Share consideration received by holders of Common Stock in the transaction adjusted to the extent necessary to comply with the Listing Rules applying to a reorganization of capital at the relevant time.

(d) **Certain Distributions.** In the event of any distribution to the Company's stockholders of securities of any other entity or other assets (other than dividends payable in cash or stock of the Company) without receipt of consideration by the Company, the Administrator shall appropriately adjust the price per Share of Common Stock covered by each outstanding Option or Stock Purchase Right to reflect the effect of such distribution to the extent necessary to comply with the Listing Rules applying to a reorganization of capital at the relevant time.

14. **Time of Granting Options and Stock Purchase Rights.** The date of grant of an Option or Stock Purchase Right shall, for all purposes, be the date on which the Administrator makes the determination granting such Option or Stock Purchase Right, or such other date as is determined by the Administrator, provided that in the case of any Incentive Stock Option, the

grant date shall be the later of the date on which the Administrator makes the determination granting such Incentive Stock Option or the date of commencement of the Optionee's employment relationship with the Company. Notice of the determination shall be given to each Employee or Consultant to whom an Option or Stock Purchase Right is so granted within a reasonable time after the date of such grant.

15. **Amendment and Termination of the Plan**.

(a) **Authority to Amend or Terminate.** The Board may at any time amend, alter, suspend or discontinue the Plan, but no amendment, alteration, suspension or discontinuation (other than an adjustment pursuant to Section 13 above) shall be made in breach of the Listing Rules or that would otherwise materially and adversely affect the rights of any Optionee or holder of Stock Purchase Rights under any outstanding grant, without his or her consent. In addition, to the extent necessary and desirable to comply with the Applicable Laws, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required.

(b) **Effect of Amendment or Termination.** Except as to amendments which the Administrator has the authority under the Plan to make unilaterally, no amendment or termination of the Plan shall materially and adversely affect Options or Stock Purchase Rights already granted, unless mutually agreed otherwise between the Optionee or holder of the Stock Purchase Rights and the Administrator, which agreement must be in writing and signed by the Optionee or holder and the Company.

16. **Conditions Upon Issuance of Shares.** Notwithstanding any other provision of the Plan or any agreement entered into by the Company pursuant to the Plan, the Company shall not be obligated, and shall have no liability for failure, to issue or deliver any Shares under the Plan unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. As a condition to the exercise of an Option or Stock Purchase Right, the Company may require the person exercising the award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required by law.

17. **Reservation of Shares.** The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. **Agreements.** Options and Stock Purchase Rights shall be evidenced by Option Agreements and Restricted Stock Purchase Agreements, respectively, in such form(s) as the Administrator shall from time to time approve.

19. **Stockholder Approval.** If required by the Applicable Laws, continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under the Applicable Laws.

20. **Information and Documents to Optionees and Purchasers.** Prior to the date, if any, upon which the Common Stock becomes a Listed Security and if required by the Applicable Laws, the Company shall provide financial statements at least annually to each Optionee and to each individual who acquired Shares pursuant to the Plan, during the period such Optionee or purchaser has one or more Options or Stock Purchase Rights outstanding, and in the case of an individual who acquired Shares pursuant to the Plan, during the period such individual owns such Shares. The Company shall not be required to provide such information if the issuance of Options or Stock Purchase Rights under the Plan is limited to key employees whose duties in connection with the Company assure their access to equivalent information.

SUNSHINE HEART, INC.
Amended and Restated 2002 Stock Plan

NOTICE OF STOCK OPTION GRANT

[Name]
[Address]

You have been granted an option to purchase Common Stock of Sunshine Heart, Inc. (the "Company") as follows:

Board Approval Date:

Date of Grant (Later of Board Approval Date or Commencement of Employment/Consulting):

Exercise Price per Share:

Total Number of Shares Granted:

Total Exercise Price:

Type of Option:

Expiration Date:

Vesting Commencement Date:

Nominee of the Optionee:

Vesting/Exercise Schedule:

Termination Period:

Transferability:

By your signature and the signature of the Company's representative below, you and the Company agree that this option is granted under and governed by the terms and conditions of the Company's Amended and Restated 2002 Stock Plan and the Stock Option Agreement, both of which are attached and made a part of this document.

In addition, you agree and acknowledge that your rights to any Shares underlying the Option will be earned only as you provide services to the Company over time, that the grant of the Option is not as consideration for services you rendered to the Company prior to your

Vesting Commencement Date, and that nothing in this Notice or the attached documents confers upon you any right to continue your employment or consulting relationship with the Company for any period of time, nor does it interfere in any way with your right or the Company's right to terminate that relationship at any time, for any reason, with or without cause.

SUNSHINE HEART, INC.

______________________	By: ______________________
[Name]	Name: ______________________
	Title: ______________________

SUNSHINE HEART, INC.
Amended and Restated 2002 Stock Plan

STOCK OPTION AGREEMENT

1. **Grant of Option**. Sunshine Heart, Inc., a Delaware corporation (the "Company"), hereby grants to ("Optionee"), an option (the "Option") to purchase the total number of shares of Common Stock (the "Shares") set forth in the Notice of Stock Option Grant (the "Notice"), at the exercise price per Share set forth in the Notice (the "Exercise Price") subject to the terms, definitions and provisions of the Company's Amended and Restated Stock Plan (the "Plan") adopted by the Company, which is incorporated in this Agreement by reference. Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings defined in the Plan.

2. **Designation of Option**. This Option is intended to be a Nonstatutory Stock Option.

3. **Exercise of Option**. This Option shall be exercisable during its term in accordance with the Vesting/Exercise Schedule set out in the Notice and with the provisions of Section 9 of the Plan as follows:

(a) **Right to Exercise**.

(i) This Option may not be exercised for a fraction of a share.

(ii) In the event of Optionee's death, disability or other termination of employment, the exercisability of the Option is governed by Section 5 below, subject to the limitations contained in this Section 3.

(iii) In no event may this Option be exercised after the Expiration Date of the Option as set forth in the Notice.

(b) **Method of Exercise**.

(i) This Option shall be exercisable by execution and delivery of the Exercise Notice and Restricted Stock Purchase Agreement attached hereto as Exhibit A (the "Exercise Agreement") or of any other form of written notice approved for such purpose by the Company which shall state Optionee's election to exercise the Option, the number of Shares in respect of which the Option is being exercised, and such other representations and agreements as to the holder's investment intent with respect to such Shares as may be required by the Company pursuant to the provisions of the Plan. Such written notice shall be signed by Optionee and shall be delivered to the Company by such means as are determined by the Plan Administrator in its discretion to constitute adequate delivery. The written notice shall be accompanied by payment of the Exercise Price. This Option shall be deemed to be exercised upon receipt by the Company of such written notice accompanied by the Exercise Price.

(ii) As a condition to the exercise of this Option and as further set forth in Section 12 of the Plan, Optionee agrees to make adequate provision for federal, state or other tax withholding obligations, if any, which arise upon the vesting or exercise of the

Option, or disposition of Shares, whether by withholding, direct payment to the Company, or otherwise

(iii) The Company is not obligated, and will have no liability for failure, to issue or deliver any Shares upon exercise of the Option unless such issuance or delivery would comply with the Applicable Laws, with such compliance determined by the Company in consultation with its legal counsel. This Option may not be exercised until such time as the Plan has been approved by the stockholders of the Company, or if the issuance of such Shares upon such exercise or the method of payment of consideration for such shares would constitute a violation of any applicable federal or state securities or other law or regulation, including any rule under Part 221 of Title 12 of the Code of Federal Regulations as promulgated by the Federal Reserve Board. As a condition to the exercise of this Option, the Company may require Optionee to make any representation and warranty to the Company as may be required by the Applicable Laws. Assuming such compliance, for income tax purposes the Shares shall be considered transferred to Optionee on the date on which the Option is exercised with respect to such Shares.

4. **Method of Payment**. Payment of the Exercise Price shall be by any of the following, or a combination of the following, at the election of Optionee:

(a) cash or check;

(b) cancellation of indebtedness; or

(c) prior to the date, if any, upon which the Common Stock becomes a Listed Security, by surrender of other shares of Common Stock of the Company that have an aggregate Fair Market Value on the date of surrender equal to the Exercise Price of the Shares as to which the Option is being exercised. In the case of shares acquired directly or indirectly from the Company, such shares must have been owned by Optionee for more than six (6) months on the date of surrender (or such other period of time as is necessary to avoid the Company's incurring adverse accounting charges).

5. **Termination of Relationship**. Following the date of termination of Optionee's Continuous Service Status for any reason (the "Termination Date"), Optionee may exercise the Option only as set forth in the Notice and this Section 5. To the extent that Optionee is not entitled to exercise this Option as of the Termination Date, or if Optionee does not exercise this Option within the Termination Period set forth in the Notice or the termination periods set forth below, the Option shall terminate in its entirety. In no event, may any Option be exercised after the Expiration Date of the Option as set forth in the Notice.

(a) **Termination**. In the event of termination of Optionee's Continuous Service Status other than as a result of Optionee's disability or death, Optionee may, to the extent Optionee is vested in the Option Shares at the date of such termination (the "Termination Date"), exercise this Option during the Termination Period set forth in the Notice.

(b) **Other Terminations**. In connection with any termination other than a termination covered by Section 5(a), Optionee may exercise the Option only as described below:

(i) **Termination upon Disability of Optionee**. In the event of termination of Optionee's Continuous Service Status as a result of Optionee's disability, Optionee may, but only within twelve months from the Termination Date, exercise this Option to the extent Optionee was vested in the Option Shares as of such Termination Date.

(ii) **Death of Optionee**. In the event of the death of Optionee (a) during the term of this Option and while an Employee or Consultant of the Company and having been in Continuous Service Status since the date of grant of the Option, or (b) within thirty (30) days after Optionee's Termination Date, the Option may be exercised at any time within twelve months following the date of death by Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent Optionee was vested in the Option as of the Termination Date.

6. **Transferability of Option**. This Option may be transferred in pursuant to the terms in Section 12 of the Company's Amended and Restated 2002 Stock Plan. The terms of this Option shall be binding upon the executors, administrators, heirs, successors and assigns of Optionee.

7. **Tax Consequences**. OPTIONEE SHOULD CONSULT A TAX ADVISER IN HIS OR HER COUNTRY OF RESIDENCE IN ORDER TO ASCERTAIN THE TAX EFFECTS OF RECEIPT OR EXERCISE OF THIS OPTION, OR DISPOSITION OF THE SHARES.

8. **Lock-Up Agreement**. In connection with the initial public offering of the Company's securities in the United States and upon request of the Company or the underwriters managing any underwritten offering of the Company's securities, Optionee hereby agrees not to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however and whenever acquired (other than those included in the registration) without the prior written consent of the Company or such underwriters, as the case may be, for such period of time (not to exceed 180 days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the public offering.

9. **Effect of Agreement**. Optionee acknowledges receipt of a copy of the Plan and represents that he or she is familiar with the terms and provisions thereof (and has had an opportunity to consult counsel regarding the Option terms), and hereby accepts this Option and agrees to be bound by its contractual terms as set forth herein and in the Plan. Optionee hereby agrees to accept as binding, conclusive and final all decisions and interpretations of the Plan Administrator regarding any questions relating to the Option. In the event of a conflict between the terms and provisions of the Plan and the terms and provisions of the Notice and this Agreement, the Plan terms and provisions shall prevail, The Option, including the Plan, constitutes the entire agreement between Optionee and the Company on the subject matter hereof and supersedes all proposals, written or oral, and all other communications between the parties relating to such subject matter.

[Signature Page Follows]

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

SUNSHINE HEART, INC.

______________________________	By: ______________________
[Name]	Name: ______________________
	Title: ______________________

Dated: ______________________________

SUNSHINE HEART, INC.
2011 EQUITY INCENTIVE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: March 17, 2011
AMENDED BY THE BOARD OF DIRECTORS: May 20, 2011
APPROVED BY THE STOCKHOLDERS: August 18, 2011

1. GENERAL.

(a) Successor to and Continuation of Prior Plan. The Plan is intended as the successor to and continuation of the Sunshine Heart, Inc. Amended and Restated 2002 Stock Plan (the ***"Prior Plan"***). Following the Effective Date, no additional stock awards shall be granted under the Prior Plan. Any shares remaining available for future issuance of stock awards under the Prior Plan as of the Effective Date (the ***"Prior Plan's Available Reserve"***) shall become available for issuance pursuant to Stock Awards granted hereunder. From and after the Effective Date, all outstanding stock awards granted under the Prior Plan shall remain subject to the terms of the Prior Plan; provided, however, any shares underlying outstanding stock awards granted under the Prior Plan that expire or terminate for any reason prior to exercise or settlement or are forfeited because of the failure to meet a contingency or condition required to vest such shares (the ***"Returning Shares"***) shall become available for issuance pursuant to Awards granted hereunder. All Awards granted on or after the Effective Date of this Plan shall be subject to the terms of this Plan.

(b) Eligible Award Recipients. The persons eligible to receive Awards are Employees, Directors and Consultants.

(c) Available Awards. The Plan provides for the grant of the following Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Stock Appreciation Rights, (iv) Performance Stock Awards, (v) Performance Cash Awards, and (vi) Other Stock Awards.

(d) Purpose. The Company, by means of the Plan, seeks to secure and retain the services of the group of persons eligible to receive Awards as set forth in Section 1(b), to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and to provide a means by which such eligible recipients may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Awards.

(e) Listing Rules. Notwithstanding any other provision of this Plan, while the Company is admitted to the official list of ASX, the provisions of this Plan are subject to the Listing Rules and this Plan is deemed to include any provisions necessary to comply with the Listing Rules.

2. ADMINISTRATION.

(a) Administration by Board. The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) Powers of Board. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time (A) which of the persons eligible under the Plan shall be granted Awards; (B) when and how each Award shall be granted; (C) what type or combination of types of Award shall be granted; (D) the provisions of each Award granted (which need not be identical), including the time or times when a person shall be permitted to receive cash or Common Stock pursuant to a Stock Award; (E) the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person; and (F) the Fair Market Value applicable to a Stock Award.

(ii) To construe and interpret the Plan and Awards granted under the Plan, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement or in the written terms of a Performance Cash Award, in a manner and to the extent it shall deem necessary or expedient to make the Plan or Award fully effective.

(iii) To settle all controversies regarding the Plan and Awards granted under it.

(iv) To accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Award stating the time at which it may first be exercised or the time during which it will vest.

(v) To suspend or terminate the Plan at any time. Suspension or termination of the Plan shall not impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vi) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, by adopting amendments relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to bring the Plan or Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. However, except as provided in Section 9(a) relating to Capitalization Adjustments, to the extent required by applicable law or listing requirements, stockholder approval shall be required for any amendment of the Plan that either (A) materially increases the number of shares of Common Stock available for issuance under the Plan, (B) materially expands the class of individuals eligible to receive Awards under the Plan, (C) materially increases the benefits accruing to Participants under the Plan or materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (D) materially extends the term of the Plan, or (E) expands the types of Awards available for issuance under the Plan. Except as provided above, rights under any Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing.

(vii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of (A) Section 162(m) of the Code regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to Covered Employees, (B) Section 422 of the Code regarding "incentive stock options" or (C) Rule 16b-3.

(viii) To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; provided, however, that except with respect to amendments that disqualify or impair the status of an Incentive Stock Option, a Participant's rights under any Award shall not be impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing. Notwithstanding the foregoing, subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Awards without the affected Participant's consent if necessary to maintain the qualified status of the Award as an Incentive Stock Option or to bring the Award into compliance with Section 409A of the Code.

(ix) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(x) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States.

(xi) Subject to the Listing Rules, to effect, at any time and from time to time, with the consent of any adversely affected Participant, (A) the reduction of the exercise price (or strike price) of any outstanding Option or SAR under the Plan; (B) the cancellation of any outstanding Option or SAR under the Plan and the grant in substitution therefor of (1) a new Option or SAR under the Plan or another equity plan of the Company covering the same or a different number of shares of Common Stock, (2) an Other Stock Award, (3) cash and/or (4) other valuable consideration (as determined by the Board, in its sole discretion); or (C) any other action that is treated as a repricing under generally accepted accounting principles.

(c) Delegation to Committee.

(i) General. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(ii) Section 162(m) and Rule 16b-3 Compliance. The Committee may consist solely of two (2) or more Outside Directors, in accordance with Section 162(m) of the Code, or solely of two (2) or more Non-Employee Directors, in accordance with Rule 16b-3.

(d) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to Section 9(a) relating to Capitalization Adjustments and the Listing Rules, the aggregate number of shares of Common Stock of the Company that may be issued pursuant to Stock Awards after the Effective Date shall not exceed 152,000,000 shares plus the number of the Returning Shares. For clarity, the limitation in this Section 3(a) is a limitation in the number of shares of Common Stock that may be issued pursuant to the Plan. Accordingly, this Section 3(a) does not limit the granting of Stock Awards except as provided in Section 7(a). Shares may be issued in connection with a merger or acquisition as permitted by, as applicable, NASDAQ Marketplace Rule 4350(i)(1)(A)(iii), NYSE Listed Company Manual Section 303A.08, AMEX Company Guide Section 711 or other applicable stock exchange rules, and such issuance shall not reduce the number of shares available for issuance under the Plan. Furthermore, if a Stock Award or any portion thereof (i) expires or otherwise terminates without all of the shares covered by such Stock Award having been issued or (ii) is settled in cash (i.e., the Participant receives cash rather than stock), such expiration, termination or settlement shall not reduce (or otherwise offset) the number of shares of Common Stock that may be available for issuance under the Plan.

(b) Reversion of Shares to the Share Reserve. If any shares of Common Stock issued pursuant to a Stock Award are forfeited back to the Company because of the failure to meet a contingency or condition required to vest such shares in the Participant, then the shares that are forfeited shall revert to and again become available for issuance under the Plan. Any shares reacquired, withheld, or not issued by the Company pursuant to Section 8(g) or as consideration for the exercise of an Option shall again become available for issuance under the Plan. For the avoidance of doubt, if an appreciation distribution in respect of a Stock Appreciation Right is paid in shares of Common Stock, the number of shares subject to the Stock Award that are not delivered to the Participant shall remain available for subsequent issuance under the Plan.

(c) Incentive Stock Option Limit. Notwithstanding anything to the contrary in this Section 3 and, subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options shall be 300,000,000 shares of Common Stock.

(d) Source of Shares. Subject to the provisions of the Listing Rules and any law, regulation and agreement governing the Company, the stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

4. **ELIGIBILITY.**

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and (f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants; provided, however, that Nonstatutory Stock Options and SARs may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any "parent" of the Company, as such term is defined in Rule 405, unless the stock underlying such Stock Awards is treated as "service recipient stock" under Section 409A of the Code because the Stock Awards are granted pursuant to a corporate transaction (such as a spin off transaction) or unless such Stock Awards comply with the distribution requirements of Section 409A of the Code.

(b) Ten Percent Stockholders. A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

5. **PROVISIONS RELATING TO OPTIONS AND STOCK APPRECIATION RIGHTS.** Each Option or SAR shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, then the Option shall be a Nonstatutory Stock Option. The provisions of separate Options or SARs need not be identical; provided, however, that each Option Agreement or Stock Appreciation Right Agreement shall conform to (through incorporation of provisions hereof by reference in the applicable Award Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option or SAR shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Award Agreement.

(b) Exercise Price. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise price (or strike price) of each Option or SAR shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR on the date the Option or SAR is granted. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise price (or strike price) lower than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option or SAR if such Option or SAR is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Sections 409A and, if applicable, Section 424(a) of the Code. Each SAR will be denominated in shares of Common Stock equivalents.

(c) Purchase Price for Options. The purchase price of Common Stock acquired pursuant to the exercise of an Option shall be paid, to the extent permitted by applicable

law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board shall have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. Subject to the provisions of the Listing Rules and any law, regulation and agreement governing the Company, the permitted methods of payment are as follows:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) if the Option is a Nonstatutory Stock Option, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided, further, that shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are reduced to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(v) in any other form of legal consideration that may be acceptable to the Board.

(d) Exercise and Payment of a SAR. To exercise any outstanding Stock Appreciation Right, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right. The appreciation distribution payable on the exercise of a Stock Appreciation Right will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the Stock Appreciation Right) of a number of shares of Common Stock equal to the number of Common Stock equivalents in which the Participant is vested under such Stock Appreciation Right, and with respect to which the Participant is exercising the Stock Appreciation Right on such date, over (B) the strike price that will be determined by the Board at the time of grant of the Stock Appreciation Right. The appreciation distribution in respect to a Stock Appreciation Right may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and contained in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

(e) Transferability of Options and SARs. The Board may, in its sole discretion, impose such limitations on the transferability of Options and SARs as the Board shall determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options and SARs shall apply:

(i) Restrictions on Transfer. An Option or SAR shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant; provided, however, that the Board may, in its sole discretion, permit transfer of the Option or SAR in a manner that is not prohibited by applicable tax and securities laws upon the Participant's request. Except as explicitly provided herein, neither an Option nor a SAR may be transferred for consideration.

(ii) Domestic Relations Orders. Notwithstanding the foregoing, an Option or SAR may be transferred pursuant to a domestic relations order; provided, however, that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Notwithstanding the foregoing, the Participant may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company and any broker designated by the Company to effect Option exercises, designate a third party who, in the event of the death of the Participant, shall thereafter be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise. In the absence of such a designation, the executor or administrator of the Participant's estate shall be entitled to exercise the Option or SAR and receive the Common Stock or other consideration resulting from such exercise.

(f) Vesting Generally. The total number of shares of Common Stock subject to an Option or SAR may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option or SAR may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of Performance Goals or other criteria) as the Board may deem appropriate. The vesting provisions of individual Options or SARs may vary. The provisions of this Section 5(f) are subject to any Option or SAR provisions governing the minimum number of shares of Common Stock as to which an Option or SAR may be exercised.

(g) Termination of Continuous Service. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates (other than for Cause or upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Award as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the applicable Award Agreement), or (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the time specified herein or in the Award Agreement (as applicable), the Option or SAR shall terminate.

(h) Extension of Termination Date. If the exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause or upon the Participant's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option or SAR shall terminate on the earlier of (i) the expiration of a total period of three (3) months (that need not be consecutive) after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement. In addition, unless otherwise provided in a Participant's Award Agreement, if the sale of any Common Stock received upon exercise of an Option or SAR following the termination of the Participant's Continuous Service (other than for Cause) would violate the Company's insider trading policy, then the Option or SAR shall terminate on the earlier of (i) the expiration of a period equal to the applicable post-termination exercise period after the termination of the Participant's Continuous Service during which the exercise of the Option or SAR would not be in violation of the Company's insider trading policy, or (ii) the expiration of the term of the Option or SAR as set forth in the applicable Award Agreement.

(i) Disability of Participant. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if a Participant's Continuous Service terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR (to the extent that the Participant was entitled to exercise such Option or SAR as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Award Agreement), or (ii) the expiration of the term of the Option or SAR as set forth in the Award Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Option or SAR within the time specified herein or in the Award Agreement (as applicable), the Option or SAR (as applicable) shall terminate.

(j) Death of Participant. Except as otherwise provided in the applicable Award Agreement or other agreement between the Participant and the Company, if (i) a Participant's Continuous Service terminates as a result of the Participant's death, or (ii) the Participant dies within the period (if any) specified in the Award Agreement after the termination of the Participant's Continuous Service for a reason other than death, then the Option or SAR may be exercised (to the extent the Participant was entitled to exercise such Option or SAR as of the date of death) by the Participant's estate, by a person who acquired the right to exercise the Option or SAR by bequest or inheritance or by a person designated to exercise the Option or SAR upon the Participant's death, but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Award Agreement), or (ii) the expiration of the term of such Option or SAR as set forth in the Award Agreement. If, after the Participant's death, the Option or SAR is not exercised within the time specified herein or in the Award Agreement (as applicable), the Option or SAR shall terminate.

(k) Termination for Cause. Except as explicitly provided otherwise in a Participant's Award Agreement, if a Participant's Continuous Service is terminated for Cause, the Option or SAR shall terminate upon the date of such Participant's termination of Continuous

Service, and the Participant shall be prohibited from exercising his or her Option or SAR from and after the time of such termination of Continuous Service.

(l) Non-Exempt Employees. No Option or SAR granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable for any shares of Common Stock until at least six (6) months following the date of grant of the Option or SAR. Notwithstanding the foregoing, consistent with the provisions of the Worker Economic Opportunity Act, (i) in the event of the Participant's death or Disability, (ii) upon a Corporate Transaction in which such Option or SAR is not assumed, continued, or substituted, (iii) upon a Change in Control, or (iv) upon the Participant's retirement (as such term may be defined in the Participant's Award Agreement or in another applicable agreement or in accordance with the Company's then current employment policies and guidelines), any such vested Options and SARs may be exercised earlier than six (6) months following the date of grant. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay.

6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS AND SARS.

(a) Performance Awards.

(i) Performance Stock Awards. A Performance Stock Award is a Stock Award that may vest or may be exercised contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Stock Award may, but need not, require the completion of a specified period of Continuous Service. The length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained shall be conclusively determined by the Committee, in its sole discretion. The maximum number of shares that may be granted to any Participant in a calendar year attributable to Stock Awards described in this Section 6(c)(i) shall not exceed 37,500,000 shares of Common Stock. The Board may provide for or, subject to such terms and conditions as the Board may specify, may permit a Participant to elect for, the payment of any Performance Stock Award to be deferred to a specified date or event. In addition, to the extent permitted by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

(ii) Performance Cash Awards. A Performance Cash Award is a cash award that may be paid contingent upon the attainment during a Performance Period of certain Performance Goals. A Performance Cash Award may also require the completion of a specified period of Continuous Service. At the time of grant of a Performance Cash Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained shall be conclusively determined by the Committee, in its sole discretion. The maximum value that may be granted to any Participant in a calendar year attributable to cash awards described in this Section 6(c)(ii) shall not exceed two million dollars ($2,000,000). The Board may provide for or, subject to such terms and conditions as the Board may specify, may permit a Participant to elect for, the payment of any Performance Cash Award to be deferred to a

specified date or event. The Committee may specify the form of payment of Performance Cash Awards, which may be cash or other property, or may provide for a Participant to have the option for his or her Performance Cash Award, or such portion thereof as the Board may specify, to be paid in whole or in part in cash or other property.

(iii) Section 162(m) Compliance. Unless otherwise permitted in compliance with the requirements of Section 162(m) of the Code with respect to an Award intended to qualify as "performance-based compensation" thereunder, the Committee shall establish the Performance Goals applicable to, and the formula for calculating the amount payable under, the Award no later than the earlier of (A) the date ninety (90) days after the commencement of the applicable Performance Period, or (B) the date on which twenty-five percent (25%) of the Performance Period has elapsed, and in any event at a time when the achievement of the applicable Performance Goals remains substantially uncertain. Prior to the payment of any compensation under an Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code, the Committee shall certify the extent to which any Performance Goals and any other material terms under such Award have been satisfied (other than in cases where such relate solely to the increase in the value of the Common Stock). Notwithstanding satisfaction of any completion of any Performance Goals, to the extent specified at the time of grant of an Award to "covered employees" within the meaning of Section 162(m) of the Code, the number of Shares, Options, cash or other benefits granted, issued, retainable and/or vested under an Award on account of satisfaction of such Performance Goals may be reduced by the Committee on the basis of such further considerations as the Committee, in its sole discretion, shall determine.

(b) Other Stock Awards. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than one hundred percent (100%) of the Fair Market Value of the Common Stock at the time of grant) may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board shall have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

7. COVENANTS OF THE COMPANY.

(a) Availability of Shares. During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock reasonably required to satisfy such Stock Awards.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to

obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock

Awards unless and until such authority is obtained. A Participant shall not be eligible for the grant of a Stock Award or the subsequent issuance of Common Stock pursuant to the Stock Award if such grant or issuance would be in violation of any applicable securities law.

(c) No Obligation to Notify or Minimize Taxes. The Company shall have no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company shall have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

8. MISCELLANEOUS.

(a) Use of Proceeds from Sales of Common Stock. Proceeds from the sale of shares of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Stock Awards. Corporate action constituting a grant by the Company of a Stock Award to any Participant shall be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant.

(c) Stockholder Rights. Other than as expressly set out in this Plan or as permitted under the Listing Rules, a Stock Award does not give a Participant any right to vote, receive dividends, participate in issues of new shares of Common Stock or grant any other rights to the Participant as a shareholder of the Company unless and until (i) such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms, if applicable, and (ii) the issuance of the Common Stock subject to such Stock Award has been entered into the books and records of the Company.

(d) No Employment or Other Service Rights. Nothing in the Plan, any Stock Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) Incentive Stock Option $100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds One Hundred Thousand Dollars ($100,000), the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(f) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (A) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (B) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(g) Withholding Obligations. Unless prohibited by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; provided, however, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lesser amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Award Agreement.

(h) Electronic Delivery. Any reference herein to a "written" agreement or document shall include any agreement or document delivered electronically or posted on the Company's intranet.

(i) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may

establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee or otherwise providing services to the Company. The Board is authorized to make deferrals of Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of Continuous Service, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(j) Compliance With Section 409A. To the extent that the Board determines that any Award granted hereunder is subject to Section 409A of the Code, the Award Agreement evidencing such Award shall incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Award Agreements shall be interpreted in accordance with Section 409A of the Code. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the Shares are publicly traded and a Participant holding an Award that constitutes "deferred compensation" under Section 409A of the Code is a "specified employee" for purposes of Section 409A of the Code, no distribution or payment of any amount shall be made upon a "separation from service" before a date that is six (6) months following the date of such Participant's "separation from service" (as defined in Section 409A of the Code without regard to alternative definitions thereunder) or, if earlier, the date of the Participant's death.

9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of, and upon, a Capitalization Adjustment or other reorganization of capital, the rights of the holder of a Stock Award will be changed to the extent necessary to comply with the Listing Rules applying to a reorganization of capital at the time of the reorganization. The Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c) and (iii) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive.

(b) Pro Rata Issues and Bonus Issues. In the case of a pro-rata issue (other than a bonus issue), the exercise price of a Stock Award will be adjusted in accordance with the formula set out for making such an adjustment in the Listing Rules. In the case of a bonus issue, the number of securities over which the Stock Award is exercisable will, in accordance with the Listing Rules, be increased by the number of securities which the Participant would have received if the Stock Award had been exercised before the record date for the bonus issue. Such adjustments shall be made by the Board, whose determination in that respect shall be final, binding and conclusive.

(c) Dissolution or Liquidation. Except as otherwise provided in the Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding

Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) shall terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service; provided, however, that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(d) Corporate Transaction. The following provisions shall apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the holder of the Stock Award or unless otherwise expressly provided by the Board at the time of grant of a Stock Award or as provided in the Listing Rules. In the event of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board shall take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction;

(iv) arrange for the lapse of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(v) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration, if any, as the Board, in its sole discretion, may consider appropriate; and

(vi) make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the Participant would have received upon the exercise of the Stock Award, over (B) any exercise price payable by such holder in connection with such exercise.

The Board need not take the same action or actions with respect to all Stock Awards or portions thereof or with respect to all Participants.

(e) Change in Control. A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant, but in the absence of such provision, no such acceleration shall occur.

10. TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. The Board may suspend or terminate the Plan at any time; provided, however that Incentive Stock Options may no longer be granted under the Plan after the day before the tenth (10th) anniversary of the earlier of (i) the date the Plan is adopted by the Board, or (ii) the date the Plan is approved by the stockholders of the Company. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan shall not impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

11. EFFECTIVE DATE OF THE PLAN. This Plan shall become effective on the Effective Date, but no Award shall be exercised (or in the case of an Other Stock Award shall be granted) unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

12. CHOICE OF LAW. The law of the state of Minnesota shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

13. DEFINITIONS. As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

(a) ***"Affiliate"*** means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The Board shall have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(b) ***"ASX"*** means ASX Limited ABN 98 008 624 691.

(c) ***"Award"*** means a Stock Award or a Performance Cash Award.

(d) ***"Award Agreement"*** means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award.

(e) ***"Board"*** means the Board of Directors of the Company.

(f) ***"Capitalization Adjustment"*** means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards No. 123 (revised). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a Capitalization Adjustment.

(g) ***"Cause"*** shall have the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term shall mean with respect to a Participant, the occurrence of any of the following events, if such event results in a demonstrably harmful impact on the Company's business or reputation, or that of any of its Subsidiaries: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause shall be made by the Company in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated by reason of dismissal without Cause for the purposes of outstanding Awards held by such Participant shall have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(h) ***"Change in Control"*** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, or (C) solely because the level of Ownership held by any Exchange Act Person (the ***"Subject Person"***) exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or

other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur, except for a liquidation into a parent corporation;

(iv) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the ***"Incumbent Board"***) cease for any reason to constitute at least a majority of the members of the Board; provided, however, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, (A) the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Awards subject to such agreement; provided, however, that if no definition of Change in Control or any

analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(i) ***"Code"*** means the Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(j) ***"Committee"*** means a committee of one (1) or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(k) ***"Common Stock"*** means the common stock of the Company.

(l) ***"Company"*** means Sunshine Heart, Inc., a Delaware corporation.

(m) ***"Consultant"*** means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, shall not cause a Director to be considered a "Consultant" for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company's securities to such person.

(n) ***"Continuous Service"*** means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, shall not terminate a Participant's Continuous Service; provided, however, if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, in its sole discretion, such Participant's Continuous Service shall be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of (i) any leave of absence approved by the Board or Chief Executive Officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(o) ***"Corporate Transaction"*** means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) the consummation of a sale or other disposition of all or substantially all, as determined by the Board, in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) the consummation of a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;

(iii) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(p) ***"Covered Employee"*** shall have the meaning provided in Section 162(m)(3) of the Code.

(q) ***"Director"*** means a member of the Board.

(r) ***"Disability"*** means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code, and shall be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(s) ***"Effective Date"*** means the effective date of this Plan document, which is the earlier of (i) the date this Plan is first approved by the Company's stockholders, or (ii) the date this Plan is adopted by the Board.

(t) ***"Employee"*** means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an "Employee" for purposes of the Plan.

(u) ***"Entity"*** means a corporation, partnership, limited liability company or other entity.

(v) ***"Exchange Act"*** means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(w) ***"Exchange Act Person"*** means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" shall not include (i) the Company or any Subsidiary of the Company; (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company; (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities; (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of

the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities.

(x) ***"Fair Market Value"*** means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable.

(ii) Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

(y) ***"Incentive Stock Option"*** means an option granted pursuant to Section 5 of the Plan that is intended to be, and qualifies as, an "incentive stock option" within the meaning of Section 422 of the Code.

(z) ***"Listing Rules"*** means the Listing Rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

(aa) ***"Non-Employee Director"*** means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act (***"Regulation S-K"***)), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(bb) ***"Nonstatutory Stock Option"*** means any option granted pursuant to Section 5 of the Plan that does not qualify as an Incentive Stock Option.

(cc) ***"Officer"*** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(dd) ***"Option"*** means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(ee) ***"Option Agreement"*** means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(ff) ***"Optionholder"*** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(gg) ***"Other Stock Award"*** means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(d).

(hh) ***"Other Stock Award Agreement"*** means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(ii) ***"Outside Director"*** means a Director who either (i) is not a current employee of the Company or an "affiliated corporation" (within the meaning of Treasury Regulations promulgated under Section 162(m) of the Code), is not a former employee of the Company or an "affiliated corporation" who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year, has not been an officer of the Company or an "affiliated corporation," and does not receive remuneration from the Company or an "affiliated corporation," either directly or indirectly, in any capacity other than as a Director, or (ii) is otherwise considered an "outside director" for purposes of Section 162(m) of the Code.

(jj) ***"Own"***, ***"Owned"***, ***"Owner"***, ***"Ownership"*** A person or Entity shall be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(kk) ***"Participant"*** means a person to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(ll) ***"Performance Cash Award"*** means an award of cash granted pursuant to the terms and conditions of Section 6(c)(ii).

(mm) ***"Performance Criteria"*** means the one or more criteria that the Board shall select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that shall be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Board: (i) earnings (including earnings per share and net earnings); (ii) earnings before interest, taxes and depreciation; (iii) earnings before interest, taxes, depreciation and amortization; (iv) total stockholder return; (v) return on equity or average stockholder's equity; (vi) return on assets, investment, or capital employed; (vii) stock price; (viii) margin (including gross margin); (ix) income (before or after taxes); (x) operating income; (xi) operating income after taxes; (xii) pre-tax profit; (xiii) operating cash flow; (xiv) sales or revenue targets; (xv) increases in revenue or product revenue;

(xvi) expenses and cost reduction goals; (xvii) improvement in or attainment of working capital levels; (xiii) economic value added (or an equivalent metric); (xix) market share; (xx) cash flow; (xxi) cash flow per share; (xxii) share price performance; (xxiii) debt reduction; (xxiv) implementation or completion of projects or processes; (xxv) customer satisfaction; (xxvi) stockholders' equity; (xxvii) capital expenditures; (xxiii) debt levels; (xxix) operating profit or net operating profit; (xxx) workforce diversity; (xxxi) growth of net income or operating income; (xxxii) billings; and (xxxiii) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board.

(nn) ***"Performance Goals"*** means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board shall appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (A) to exclude restructuring and/or other nonrecurring charges; (B) to exclude exchange rate effects, as applicable, for non-U.S. dollar denominated Performance Goals; (C) to exclude the effects of changes to generally accepted accounting principles; (D) to exclude the effects of any statutory adjustments to corporate tax rates; and (E) to exclude the effects of any "extraordinary items" as determined under generally accepted accounting principles. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Stock Award Agreement or the written terms of a Performance Cash Award.

(oo) ***"Performance Period"*** means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to and the payment of a Stock Award or a Performance Cash Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

(pp) ***"Performance Stock Award"*** means a Stock Award granted under the terms and conditions of Section 6(c)(i).

(qq) ***"Plan"*** means this Sunshine Heart, Inc. 2011 Equity Incentive Plan.

(rr) ***"***

(ss) ***"Rule 16b-3"*** means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(tt) ***"Securities Act"*** means the Securities Act of 1933, as amended.

(uu) ***"Stock Appreciation Right"*** or ***"SAR"*** means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 5.

(vv) ***"Stock Appreciation Right Agreement"*** means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement shall be subject to the terms and conditions of the Plan.

(ww) ***"Stock Award"*** means any right to receive Common Stock granted under the Plan, including an Incentive Stock Option, a Nonstatutory Stock Option, a Stock Appreciation Right, a Performance Stock Award or any Other Stock Award.

(xx) ***"Stock Award Agreement"*** means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(yy) ***"Subsidiary"*** means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

(zz) ***"Ten Percent Stockholder"*** means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Affiliate.

SUNSHINE HEART, INC.
STOCK OPTION GRANT NOTICE
(2011 EQUITY INCENTIVE PLAN)

Sunshine Heart, Inc. (the ***"Company"***), pursuant to its 2011 Equity Incentive Plan (the ***"Plan"***), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Option Agreement, the Plan, and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety.

Optionholder:

Date of Grant:

Vesting Commencement Date:

Number of Shares Subject to Option:

Exercise Price (Per Share):

Total Exercise Price:

Expiration Date:

Type of Grant: o Incentive Stock Option(1) o Nonstatutory Stock Option

Exercise Schedule: Same as Vesting Schedule

Vesting Schedule: [1/4th of the shares vest one year after the Vesting Commencement Date; the balance of the shares vest in a series of thirty-six (36) successive equal monthly installments measured from the first anniversary of the Vesting Commencement Date.]

Payment: By one or a combination of the following items (described in the Option Agreement):

x By cash or check
x By bank draft or money order payable to the Company
x Pursuant to a Regulation T Program if the Shares are publicly traded
x By delivery of already-owned shares if the Shares are publicly traded
x If and only to the extent this option is a Nonstatutory Stock Option, and subject to the Company's consent at the time of exercise, by a "net exercise" arrangement(2)

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(1) If this is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options) cannot be first exercisable for more than $100,000 in value (measured by exercise price) in any calendar year. Any excess over $100,000 is a Nonstatutory Stock Option.

Additional Terms/Acknowledgements: The undersigned Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice, the Option Agreement and the Plan. Optionholder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice, the Option Agreement, and the Plan set forth the entire understanding between Optionholder and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) options previously granted and delivered to Optionholder by the Company, and (ii) the following agreements only:

OTHER AGREEMENTS:

SUNSHINE HEART, INC.	**OPTIONHOLDER:**
By: ______________________ Signature	______________________ Signature
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

ATTACHMENTS: Option Agreement, 2011 Equity Incentive Plan and Notice of Exercise

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(2) Any portion of this option intended to qualify as an Incentive Stock Option may not be exercised by net exercise.

SUNSHINE HEART, INC.
STOCK OPTION GRANT NOTICE

ATTACHMENT I

OPTION AGREEMENT

OPTION AGREEMENT
(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)

Pursuant to your Stock Option Grant Notice (***"Grant Notice"***) and this Option Agreement, Sunshine Heart, Inc. (the ***"Company"***) has granted you an option under its 2011 Equity Incentive Plan (the ***"Plan"***) to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. Defined terms not explicitly defined in this Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your option are as follows:

1. VESTING. Subject to the limitations contained herein, your option will vest as provided in your Grant Notice, provided that vesting will cease upon the termination of your Continuous Service.

2. NUMBER OF SHARES AND EXERCISE PRICE. The number of shares of Common Stock subject to your option and your exercise price per share referenced in your Grant Notice may be adjusted from time to time for Capitalization Adjustments.

3. EXERCISE RESTRICTION FOR NON-EXEMPT EMPLOYEES. In the event that you are an Employee eligible for overtime compensation under the Fair Labor Standards Act of 1938, as amended (i.e., a ***"Non-Exempt Employee"***), and except as otherwise provided in the Plan, you may not exercise your option until you have completed at least six (6) months of Continuous Service measured from the Date of Grant specified in your Grant Notice, notwithstanding any other provision of your option.

4. METHOD OF PAYMENT. Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in cash or by check or in any one or more of the following manners unless otherwise provided in your Grant Notice:

(a) Provided that at the time of exercise the Common Stock is publicly traded, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

(b) Provided that at the time of exercise the Common Stock is publicly traded, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time you exercise your option, shall include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. Notwithstanding the foregoing, you may not exercise your option by tender to the Company of Common Stock to the extent such tender would violate the provisions of the Listing Rules, any law, regulation or agreement restricting the redemption of the Company's stock.

(c) If the Option is a Nonstatutory Stock Option, subject to the consent of the Company at the time of exercise, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from you to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided further, however, that shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter to the extent that (i) shares are used to pay the exercise price pursuant to the "net exercise," (ii) shares are delivered to you as a result of such exercise, and (iii) shares are withheld to satisfy tax withholding obligations.

5. WHOLE SHARES. You may exercise your option only for whole shares of Common Stock.

6. SECURITIES LAW COMPLIANCE. Notwithstanding anything to the contrary contained herein, you may not exercise your option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

7. TERM. You may not exercise your option before the commencement or after the expiration of its term. The term of your option commences on the Date of Grant and expires, subject to the provisions of Section 5(h) of the Plan, upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three (3) months after the termination of your Continuous Service for any reason other than Cause, Disability or death; provided however, that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in Section 6 above relating to "Securities Law Compliance," your option shall not expire until the earlier of the Expiration Date or until it shall have been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service; and if (i) you are a Non-Exempt Employee, (ii) your Continuous Service terminates within six (6) months after the Date of Grant specified in your Grant Notice, and (iii) you have vested in a portion of your option at the time of your termination of Continuous Service, your option shall not expire until the earlier of (x) the later of (A) the date that is seven (7) months after the Date of Grant specified in your Grant Notice or (B) the date that is three (3) months after the termination of your Continuous Service, or (y) the Expiration Date;

(c) twelve (12) months after the termination of your Continuous Service due to your Disability;

(d) eighteen (18) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates for any reason other than Cause;

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the tenth (10th) anniversary of the Date of Grant.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your option and ending on the day three (3) months before the date of your option's exercise, you must be an Employee of the Company or an Affiliate, except in the event of your death or Disability. The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three (3) months after the date your employment with the Company or an Affiliate terminates.

8. EXERCISE.

(a) You may exercise the vested portion of your option during its term by delivering a Notice of Exercise (in a form designated by the Company) together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, together with such additional documents as the Company may then require.

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

(c) If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within fifteen (15) days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two (2) years after the date of your option grant or within one (1) year after such shares of Common Stock are transferred upon exercise of your option.

9. TRANSFERABILITY.

(a) If your option is an Incentive Stock Option, your option is generally not transferable, except (i) by will or by the laws of descent and distribution or (ii) pursuant to a domestic relations order (provided that such Incentive Stock Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer), and is exercisable during your life only by you. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Company, you may designate a third party who, in the event of your death,

shall thereafter be entitled to exercise your option. In addition, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust, provided that you and the trustee enter into transfer and other agreements required by the Company.

(b) If your option is a Nonstatutory Stock Option, your option is not transferable, except (i) by will or by the laws of descent and distribution, (ii) pursuant to a domestic relations order, (iii) with the prior written approval of the Company, by instrument to an inter vivos or testamentary trust, in a form accepted by the Company, in which the option is to be passed to beneficiaries upon the death of the trustor (settlor) and (iv) with the prior written approval of the Company, by gift, in a form accepted by the Company, to a permitted transferee under Rule 701 of the Securities Act.

10. OPTION NOT A SERVICE CONTRACT. Your option is not an employment or service contract, and nothing in your option shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option shall obligate the Company or an Affiliate, their respective stockholders, Boards of Directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

11. WITHHOLDING OBLIGATIONS.

(a) At the time you exercise your option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with your option.

(b) Upon your request and subject to approval by the Company, in its sole discretion, and in compliance with any applicable conditions or restrictions of law, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to

you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company shall have no obligation to issue a certificate for such shares of Common Stock unless such obligations are satisfied.

12. TAX CONSEQUENCES. You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You shall not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the “fair market value” per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option.

13. NOTICES. Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

14. GOVERNING PLAN DOCUMENT. Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your option and those of the Plan, the provisions of the Plan shall control.

Exhibit 10.6

SUNSHINE HEART, INC.
SENIOR MANAGEMENT STOCK OPTION GRANT NOTICE
(2011 EQUITY INCENTIVE PLAN)

Sunshine Heart, Inc. (the ***"Company"***), pursuant to its 2011 Equity Incentive Plan (the ***"Plan"***), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Option Agreement, the Plan, and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety.

Optionholder:

Date of Grant:

Vesting Commencement Date:

Number of Shares Subject to Option:

Exercise Price (Per Share):

Total Exercise Price:

Expiration Date:

Type of Grant: o Incentive Stock Option(1) o Nonstatutory Stock Option

Exercise Schedule: Same as Vesting Schedule

Vesting Schedule: [1/4th of the shares vest one year after the Vesting Commencement Date; the balance of the shares vest in a series of thirty-six (36) successive equal monthly installments measured from the first anniversary of the Vesting Commencement Date, subject to accelerated vesting under specified circumstances as provided in the Option Agreement and Plan.]

Payment: By one or a combination of the following items (described in the Option Agreement):

x By cash or check
x By bank draft or money order payable to the Company
x Pursuant to a Regulation T Program if the Shares are publicly traded
x By delivery of already-owned shares if the Shares are publicly traded

(1) If this is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options) cannot be first exercisable for more than $100,000 in value (measured by exercise price) in any calendar year. Any excess over $100,000 is a Nonstatutory Stock Option.

x If and only to the extent this option is a Nonstatutory Stock Option, and subject to the Company's consent at the time of exercise, by a "net exercise" arrangement(2)

Additional Terms/Acknowledgements: The undersigned Optionholder acknowledges receipt of, and understands and agrees to, this Stock Option Grant Notice, the Option Agreement and the Plan. Optionholder further acknowledges that as of the Date of Grant, this Stock Option Grant Notice, the Option Agreement, and the Plan set forth the entire understanding between Optionholder and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) options previously granted and delivered to Optionholder by the Company, and (ii) the following agreements only:

OTHER AGREEMENTS:

SUNSHINE HEART, INC.	**OPTIONHOLDER:**
By: ______________________	______________________
Signature	Signature
Title: ______________________	Title: ______________________
Date:	Date:

ATTACHMENTS: Option Agreement, 2011 Equity Incentive Plan and Notice of Exercise

(2) Any portion of this option intended to qualify as an Incentive Stock Option may not be exercised by net exercise.

ATTACHMENT I

OPTION AGREEMENT

SUNSHINE HEART, INC.
2011 EQUITY INCENTIVE PLAN

OPTION AGREEMENT FOR SENIOR MANAGEMENT
(INCENTIVE STOCK OPTION OR NONSTATUTORY STOCK OPTION)

Pursuant to your Stock Option Grant Notice (***"Grant Notice"***) and this Option Agreement, Sunshine Heart, Inc. (the ***"Company"***) has granted you an option under its 2011 Equity Incentive Plan (the ***"Plan"***) to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. Defined terms not explicitly defined in this Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your option are as follows:

1. VESTING. Subject to the limitations contained herein and the potential vesting acceleration provisions set forth in Section 9 hereof, your option will vest as provided in your Grant Notice, provided that vesting will cease upon the termination of your Continuous Service.

2. NUMBER OF SHARES AND EXERCISE PRICE. The number of shares of Common Stock subject to your option and your exercise price per share referenced in your Grant Notice may be adjusted from time to time for Capitalization Adjustments.

3. METHOD OF PAYMENT. Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in cash or by check or in any one or more of the following manners unless otherwise provided in your Grant Notice:

(a) Provided that at the time of exercise the Common Stock is publicly traded, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

(b) Provided that at the time of exercise the Common Stock is publicly traded, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. "Delivery" for these purposes, in the sole discretion of the Company at the time you exercise your option, shall include delivery to the Company of your attestation of ownership of such shares of Common Stock in a form approved by the Company. Notwithstanding the foregoing, you may not exercise your option by tender to the Company of Common Stock to the extent such tender would violate the provisions of the Listing Rules, any law, regulation or agreement restricting the redemption of the Company's stock.

(c) If the Option is a Nonstatutory Stock Option, subject to the consent of the Company at the time of exercise, by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issued upon exercise of your

option by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; provided, however, that the Company shall accept a cash or other payment from you to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; provided further, however, that shares of Common Stock will no longer be outstanding under your option and will not be exercisable thereafter to the extent that (i) shares are used to pay the exercise price pursuant to the "net exercise," (ii) shares are delivered to you as a result of such exercise, and (iii) shares are withheld to satisfy tax withholding obligations.

4. WHOLE SHARES. You may exercise your option only for whole shares of Common Stock.

5. SECURITIES LAW COMPLIANCE. Notwithstanding anything to the contrary contained herein, you may not exercise your option unless the shares of Common Stock issuable upon such exercise are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

6. TERM. You may not exercise your option before the commencement or after the expiration of its term. The term of your option commences on the Date of Grant and expires, subject to the provisions of Section 5(h) of the Plan, upon the earliest of the following:

(a) immediately upon the termination of your Continuous Service for Cause;

(b) three (3) months after the termination of your Continuous Service for any reason other than Cause, Disability or death, provided, however, that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in Section 5 above relating to "Securities Law Compliance," your option shall not expire until the earlier of the Expiration Date or until it shall have been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service'

(c) twelve (12) months after the termination of your Continuous Service due to your Disability;

(d) eighteen (18) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates for any reason other than Cause;

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the tenth (10th) anniversary of the Date of Grant.

If your option is an Incentive Stock Option, note that to obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your option and ending on the day three (3) months before the date of your

option's exercise, you must be an Employee of the Company or an Affiliate, except in the event of your death or Disability. The Company has provided for extended exercisability of your option under certain circumstances for your benefit but cannot guarantee that your option will necessarily be treated as an Incentive Stock Option if you continue to provide services to the Company or an Affiliate as a Consultant or Director after your employment terminates or if you otherwise exercise your option more than three (3) months after the date your employment with the Company or an Affiliate terminates.

7. EXERCISE.

(a) You may exercise the vested portion of your option during its term by delivering a Notice of Exercise (in a form designated by the Company) together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, together with such additional documents as the Company may then require.

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

(c) If your option is an Incentive Stock Option, by exercising your option you agree that you will notify the Company in writing within fifteen (15) days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two (2) years after the date of your option grant or within one (1) year after such shares of Common Stock are transferred upon exercise of your option.

8. TRANSFERABILITY.

(a) If your option is an Incentive Stock Option, your option is generally not transferable, except (i) by will or by the laws of descent and distribution or (ii) pursuant to a domestic relations order (provided that such Incentive Stock Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer), and is exercisable during your life only by you. Notwithstanding the foregoing, by delivering written notice to the Company, in a form satisfactory to the Company, you may designate a third party who, in the event of your death, shall thereafter be entitled to exercise your option. In addition, you may transfer your option to a trust if you are considered to be the sole beneficial owner (determined under Section 671 of the Code and applicable state law) while the option is held in the trust, provided that you and the trustee enter into transfer and other agreements required by the Company.

(b) If your option is a Nonstatutory Stock Option, your option is not transferable, except (i) by will or by the laws of descent and distribution, (ii) pursuant to a domestic relations order, (iii) with the prior written approval of the Company, by instrument to an inter vivos or testamentary trust, in a form accepted by the Company, in which the option is to be passed to beneficiaries upon the death of the trustor (settlor) and (iv) with the prior written

approval of the Company, by gift, in a form accepted by the Company, to a permitted transferee under Rule 701 of the Securities Act.

9. INVOLUNTARY TERMINATION FOLLOWING A CHANGE IN CONTROL.

(a) If a Change in Control occurs and as of, or within six (6) months after, the effective time of such Change in Control your Continuous Service terminates due to an involuntary termination (not including death or Disability) without Cause or due to a voluntary termination which is a Resignation for Good Reason (as defined below), then, as of the date of termination of Continuous Service, twenty-five percent (25%) of the portion of your option subject to vesting that is unvested on the effective date of such termination will vest and become exercisable immediately upon such termination.

(b) ***"Resignation for Good Reason"*** means that you voluntarily terminate employment after any of the following are undertaken without your express written consent:

(i) the assignment to you of any duties or responsibilities that results in a significant diminution in your employment role in the Company as in effect immediately prior to the effective date of the Change in Control; provided, however, that mere changes in your title or reporting relationships alone shall not constitute a basis for Resignation for Good Reason;

(ii) a greater than five percent (5%) aggregate reduction by the Company in your annual base salary, as in effect on the effective date of the Change in Control or as increased thereafter; provided, however, that if there are across-the-board proportionate salary reductions for all officers, management-level and other salaried employees due to the financial condition of the Company, a greater than ten percent (10%) aggregate reduction by the Company in your annual base salary will be required;

(iii) any failure by the Company to continue in effect any benefit plan or program, including fringe benefits, incentive plans and plans with respect to the receipt of securities of the Company, in which you are participating immediately prior to the effective date of the Change in

Control (hereinafter referred to as ***"Benefit Plans"***), or the taking of any action by the Company that would adversely affect your participation in or reduce your benefits under the Benefit Plans; provided, however, that a basis for Resignation for Good Reason shall not exist under this clause (b) following a Change in Control if the Company offers a range of benefit plans and programs that, taken as a whole, is comparable to the Benefit Plans; or

(iv) a non-temporary relocation of your business office to a location more than fifty (50) miles from the location at which you perform duties as of the effective date of the Change in Control, except for required travel by you on the Company's business to an extent substantially consistent with your business travel obligations prior to the Change in Control.

(c) If any payment or benefit you would receive pursuant to a Change in Control from the Company or otherwise (***"Payment"***) would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the ***"Excise Tax"***), then such

Payment shall be equal to the Reduced Amount. The ***"Reduced Amount"*** shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in your receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order: reduction of cash payments; cancellation of accelerated vesting of Stock Awards; reduction of employee benefits. In the event that acceleration of vesting of Stock Award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of your Stock Awards (i.e., earliest granted Stock Award cancelled last).

The accounting firm engaged by the Company for general audit purposes as of the day prior to the effective date of the Change in Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to you and the Company within fifteen (15) calendar days after the date on which your right to a Payment is triggered (if requested at that time by you or the Company) or such other time as requested by you or the Company. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish you and the Company with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon you and the Company.

10. OPTION NOT A SERVICE CONTRACT. Your option is not an employment or service contract, and nothing in your option shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option shall obligate the Company or an Affiliate, their respective stockholders, Boards of Directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

11. WITHHOLDING OBLIGATIONS.

(a) At the time you exercise your option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums

required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with your option.

(b) Upon your request and subject to approval by the Company, in its sole discretion, and in compliance with any applicable conditions or restrictions of law, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company shall have no obligation to issue a certificate for such shares of Common Stock unless such obligations are satisfied.

12. TAX CONSEQUENCES. You hereby agree that the Company does not have a duty to design or administer the Plan or its other compensation programs in a manner that minimizes your tax liabilities. You shall not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from your option or your other compensation. In particular, you acknowledge that this option is exempt from Section 409A of the Code only if the exercise price per share specified in the Grant Notice is at least equal to the "fair market value" per share of the Common Stock on the Date of Grant and there is no other impermissible deferral of compensation associated with the option.

13. NOTICES. Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

14. GOVERNING PLAN DOCUMENT. Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your option and those of the Plan, the provisions of the Plan shall control.

CHANGE IN CONTROL AGREEMENT

This Change in Control Agreement (this “Agreement”) is entered into as of , 2011 (the “Effective Date”), by and between Sunshine Heart, Inc., a Delaware corporation (the “Company”), and , a resident of ***[Minnesota/Auckland, New Zealand]** (“Executive”).

Background

WHEREAS, Executive is a key member of the management of the Company and has heretofore devoted substantial skill and effort to the affairs of the Company; and

WHEREAS, it is desirable and in the best interests of the Company and its shareholders to continue to obtain the benefits of Executive’s services and attention to the affairs of the Company; and

WHEREAS, it is desirable and in the best interests of the Company and its shareholders to provide inducement for Executive (A) to remain in the service of the Company in the event of any proposed or anticipated Change in Control (as defined below) and (B) to remain in the service of the Company in order to facilitate an orderly transition if a Change in Control occurs, without regard to the effect such Change in Control may have on Executive’s employment with the Company; and

WHEREAS, it is desirable and in the best interests of the Company and its shareholders that Executive be in a position to make judgments and advise the Company with respect to any proposed Change in Control; and

WHEREAS, for the reasons set forth above, the Company and Executive desire to enter into this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Company and Executive agree as follows:

1. **Definitions.** Capitalized terms used in the Agreement shall have their defined meaning throughout the Agreement. The following terms shall have the meanings set forth below.

(a) **“Board”** means the Board of Directors of the Company.

(b) **“Cause”** shall have the meaning ascribed to that term under Section 13(g) of the Equity Incentive Plan, replacing “Participant” with “Executive” for purposes of this Agreement.

(c) **“Code”** means the Internal Revenue Code of 1986, as amended. Any reference to a specific provision of the Code includes a reference to such provision as it may be amended from time to time and to any successor provision.

(d) **“Change in Control”** shall have the meaning ascribed to that term under Section 13(h) of the Equity Incentive Plan.

(e) **“Disability”** shall have the meaning ascribed to that term under Section 13(r) of the Equity Incentive Plan, replacing “Participant” with “Executive” for purposes of this Agreement.

(f) **“Equity Incentive Plan”** means the Sunshine Heart, Inc. 2011 Equity Incentive Plan, as amended from time to time.

(g) **“Health Benefits”** means if Executive (and/or Executive’s covered dependents) is eligible for and properly elects to continue group medical and/or dental insurance coverage, as in place immediately prior to the Termination Date, the Company’s continued payment of the Company’s portion of any premiums or costs of such coverage until the earlier of (i) ***[twelve (12) CMO/CFO/VP C&R/VP R&D] *[eighteen (18) CEO]** months after the Termination Date, or (ii) the date Executive (and/or Executive’s covered dependants, as applicable) is eligible to receive group medical and/or dental insurance coverage by a subsequent employer, in either case provided Executive remains eligible for continuation coverage and timely pays Executive’s portion, if any, of such coverage. All such Company-provided medical and/or dental insurance premiums, or costs of coverage, will be paid directly to the insurance carrier or other provider by the Company and Executive will make arrangements with the Company to pay Executive’s portion of such coverage in an amount equal to such portion that Executive would pay if Executive was actively employed by the Company during such period.

(h) **“Letter Agreement”** means the Employment Terms letter from the Company to Executive dated , 2011, and countersigned by Executive on , 2011.

(i) **“Monthly Base Salary”** means Executive’s monthly base salary as of the Termination Date, provided, however, if Executive’s monthly base salary has been reduced and such reduction has triggered Executive’s Resignation for Good Reason, then “Monthly Base Salary” shall mean Executive’s monthly base salary immediately prior to such reduction.

(j) **“Notice of Termination”** means a written notice which shall indicate the specific termination provisions in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide the basis for such termination.

(k) **“Option Agreement”** means Senior Management Stock Option Grant Notice and the related Option Agreement for Senior Management between Executive and the Company dated , 2011.

(l) **"Preliminary Event"** shall mean an involuntary termination of the Executive's employment by the Company without Cause prior to a Change in Control and the expiration of the Term; provided that Executive reasonably demonstrates that such termination (i) was requested by a party other than the Board that has taken other steps reasonably calculated to result in a Change in Control or (ii) otherwise arose in connection with or in anticipation of a Change in Control.

(m) **"Proprietary Information Agreement"** means the Employee Proprietary Information, Inventions, Assignment and Non-Competition Agreement between Executive and the Company dated , 2011.

(n) **"Resignation for Good Reason"** has the meaning ascribed to that term under Section 9(b) the Option Agreement, replacing "you" or "your" with "Executive" or "Executive's", as appropriate, for purposes of this Agreement; provided, however, that the following additional language shall be added to the end of such definition for the purposes of this Agreement:

> provided, however, that a ***"Resignation for Good Reason"*** shall not exist unless you have first provided Notice of Termination to the Company of the occurrence of one or more of the conditions under (i) — (iv) above within 30 days of the condition's occurrence, *and* such condition is not fully remedied by the Company within 30 days after the Company's receipt of written notice from you, and your Date of Termination as a result of such event occurs within 180 days after the initial occurrence of such event.

(o) **"Successor"** means any successor to all or substantially all of the Company's business by merger, consolidation, purchase of assets or otherwise.

(p) **"Term"** means the period from the Effective Date through the later of (i) the five-year anniversary of the Effective Date, provided that such period shall be automatically extended for successive two-year periods thereafter until notice of non-renewal is given by the Company or Executive to the other party hereto at least sixty (60) days prior to the five-year anniversary of the Effective Date or the end of the two-year extension period then in effect, as the case may be, or (ii) if a Change in Control occurs on or prior to the five-year anniversary of the Effective Date (or prior to the end of the two-year extension period then in effect as provided for in clause (i) hereof), the one-year anniversary of the effective date of the Change in Control.

(q) **"Termination Date"** means the date of Executive's "separation from service" with the Company within the meaning of Section 409A(a)(2)(A)(i) of the Code.

(r) **"Termination Payments"** means the Company's payment to Executive of (i) an amount equal to ***[twelve (12) CMO/CFO/VP C&R/VP R&D] *[eighteen (18) CEO]**

months of Executive's Monthly Base Salary, less applicable withholdings, plus (ii) an amount equal to the incentive bonus payment received by Executive for the fiscal year immediately preceding the fiscal year in which the Termination Date occurs, less applicable withholdings, both payable in a lump sum on the Company's first regular payroll date after expiration of the release described in Section 7.

(s) **"Transition Period"** means the period commencing on the effective date of the Change in Control and ending on the date that is one year thereafter.

2. <u>Option Acceleration Upon a Change in Control</u>. Subject to Section 8, a Change in Control while Executive is actively employed by the Company during the Term shall cause the immediate acceleration of the vesting of 100% of any unvested portion of any stock option awards held by Executive on the effective date of such Change in Control, including without limitation any options granted under the Equity Incentive Plan, which acceleration shall be in addition to any other rights Executive may have under the terms of any such stock option or restricted stock award. Any such acceleration shall not, however, detract from the authority of the Board or any committee thereof under the Equity Incentive Plan or otherwise to cancel any such stock option award, to the extent not exercised prior to the effective time of the Change in Control, in exchange for consideration, in such form as may be determined by the Board or such committee, in an amount equal to the excess, if any, of (A) the fair market value (as determined in good faith by the Board or such committee) immediately prior to the effective time of the Change in Control of the number of shares of the Company's common stock remaining subject to the stock option award, over (B) the aggregate exercise price of such number of shares remaining subject to the stock option award.

3. <u>Termination of Employment</u>. Executive shall at all times be an employee at will, and the Company may terminate Executive's employment with or without Cause at any time or Executive may resign (whether through a Resignation for Good Reason or otherwise) at any time, subject to any notice requirements or other obligations of the parties under this Agreement.

4. <u>Payments Upon Termination of Employment After a Change in Control</u>. If a Change in Control occurs during the Term, and if Executive's employment terminates such that the Termination Date occurs during or after the Transition Period, then Executive shall be entitled to payments and benefits on the terms and conditions specified in this Section 4.

(a) <u>Payment Upon Involuntary Termination Without Cause or Voluntary Resignation for Good Reason During the Transition Period</u>. If Executive's Termination Date occurs during the Transition Period, and if such termination is involuntary at the initiative of the Company without Cause or due to a voluntary Resignation for Good Reason, then, in addition to such base salary and other compensation that has been earned but not paid to Executive as of the Termination Date (which shall be payable in accordance with the Company's regular payroll

practices and applicable plans and programs), the Company shall provide to Executive the Termination Payments and the Health Benefits, subject to the conditions in Section 7.

(b) <u>Other Termination Following a Change in Control</u>. If Executive's Termination Date occurs during the Transition Period or otherwise following a Change in Control, and such termination is:

(i) by reason of Executive's abandonment of or resignation from employment for any reason (other than, during the Transition Period, a Resignation for Good Reason);

(ii) by reason of termination of Executive's employment by the Company for Cause;

(iii) because of Executive's death or Disability; or

(iv) upon or following expiration of the Term,

then the Company will pay to Executive, or Executive's beneficiary or Executive's estate, as the case may be, such base salary and other compensation that has been earned but not paid to Executive as of the Termination Date (which shall be payable pursuant to the Company's regular payroll practices and applicable plans and programs), and Executive shall not be entitled to any additional compensation or benefits provided under this Section 4.

5. <u>Payments Upon a Change in Control</u>. If Executive's employment terminates during the Term due to a voluntary Resignation for Good Reason and a Change in Control occurs within ninety (90) days after the Termination Date and during the Term or a Preliminary Event occurs and a Change in Control occurs within ninety (90) days after the Termination Date and during the Term, then, in addition to such base salary and other compensation that has been earned but not paid to Executive as of the Termination Date (which shall be payable in accordance with the Company's regular payroll practices and applicable plans and programs), the Company shall provide to Executive the Termination Payments and the Health Benefits, subject to the conditions in Section 7. Except as provided in the preceding sentence and Section 2, Executive shall not be entitled to any payments, benefits or accelerated vesting of equity upon a Change in Control.

6. <u>Payments Upon Termination of Employment Prior to a Change in Control or Upon or Following Expiration of the Term</u>. If Executive's employment is terminated for any reason, whether at the initiative of the Company or Executive or due to Executive's death or Disability, and the Termination Date occurs prior to a Change in Control or upon or following expiration of the Term, then, except as provided in Section 5, the Company will pay to Executive, or Executive's beneficiary or Executive's estate, as the case may be, such base salary and other compensation that has been earned but not paid to Executive as of the Termination Date (which shall be payable pursuant to the Company's regular payroll practices and applicable

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plans and programs), and Executive shall not be entitled to any additional compensation or benefits under this Section 6.

7. <u>Release and Other Conditions</u>. Notwithstanding any other provisions of this Agreement, neither the Company nor any Successor shall be obligated to provide the Termination Payments or Health Benefits under Sections 4 or 5 unless (a) Executive shall have signed a full release of any and all claims in favor of the Company (and any Successor), pursuant to a form of release acceptable to counsel to the Company, (b) all applicable consideration periods and rescission periods provided by law shall have expired, and (c) Executive is in strict compliance with the terms of this Agreement and the Proprietary Information Agreement as of the dates the Company provides any Termination Payments or Health Benefits.

8. <u>"Parachute Payment" Adjustment</u>. Any payment or benefit Executive is eligible to receive from the Company under this Agreement pursuant to a Change in Control shall be considered a Payment (as defined in the Option Agreement) and therefore subject to Section 9(c) of the Option Agreement.

9. <u>Notice of Termination</u>. Any purported termination of employment by the Company or by Executive (other than a termination by mutual agreement or Executive's death) shall be communicated by written Notice of Termination to the other party hereto.

10. <u>Acknowledgment of Letter Agreement or the Proprietary Information Agreement</u>. Executive acknowledges and agrees that nothing in this Agreement limits or supersedes any of the provisions contained in the Letter Agreement or the Proprietary Information Agreement, all of which remain in full force and effect between Executive and the Company and are hereby reaffirmed in all respects.

11. <u>Miscellaneous</u>.

(a) <u>Tax Withholding</u>. The Company may withhold from any amounts payable under this Agreement such federal, state and local income and employment taxes as the Company shall determine are required to be withheld pursuant to any applicable law or regulation.

(b) <u>Section 409A</u>. This Agreement is intended to satisfy, or be exempt from, the requirements of Section 409A(a)(2), (3) and (4) of the Code, including current and future guidance and regulations interpreting such provisions, and should be interpreted accordingly.

(c) <u>Assignment; Successors</u>. This Agreement is personal to Executive and without the prior written consent of the Company shall not be assignable by Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by Executive's legal representatives. The Company may, without further consent of Executive, assign this Agreement to any Successor, and this Agreement shall be binding upon and inure to the benefit of any Successor of the Company.

(d) <u>Notices</u>. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, mailed by certified mail (return receipt requested) or sent by overnight delivery service, cable, telegram, facsimile transmission or telex to the Company at the Company's address or to Executive at the last address of Executive contained in the Company's records. Either party may, by notice hereunder, designate a changed address. Notice so given shall, in the case of notice so given by mail, be deemed to be given and received on the registered date or the date stamped on the certified mail receipt, in the case of notice so given by overnight delivery service, on the date of actual delivery and, in the case of notice so given by cable, telegram, facsimile transmission, telex or personal delivery, on the date of actual transmission or, as the case may be, personal delivery.

(e) Governing Law; Consent to Jurisdiction, Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Minnesota, without regard to its principles of conflicts of laws. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of Minnesota and the United States District Court for the District of Minnesota for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated hereby. Service of process in connection with any such suit, action or proceeding may be served on each party hereto anywhere in the world by the same methods as are specified for the giving of notices under this Agreement. Each of the parties hereto irrevocably consents to the jurisdiction of any such court in any such suit, action or proceeding and to the laying of venue in such court. Each party hereto irrevocably waives any objection to the laying of venue of any such suit, action or proceeding brought in such courts and irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(f) Construction. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

(g) Waivers. No failure on the part of either party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise or any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy granted hereby or by any related document or by law.

(h) Amendment. No modification of or amendment to this Agreement nor any waiver of any rights under this Agreement shall be effective unless in a writing signed by the Company and Executive.

(i) Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Company and Executive relating to payments and benefits upon a Change in Control or termination of Executive’s employment or other separation from service with the Company. This Agreement supersedes all prior discussions, agreements or understandings between Executive and the Company related to such subject matter.

(j) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

EXECUTIVE HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS AND ACCEPTS THE OBLIGATIONS WHICH IT IMPOSES UPON EXECUTIVE WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO EXECUTIVE TO INDUCE EXECUTIVE TO SIGN THIS AGREEMENT. EXECUTIVE SIGNS THIS AGREEMENT VOLUNTARILY AND FREELY.

THE COMPANY:

SUNSHINE HEART, INC.

By: ______________________________
Name: Dave Rosa
Title: CEO

Date: ______________________________

EXECUTIVE:

____
***[insert Executive name]**

NEITHER THIS SECURITY NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE ***"SECURITIES ACT"***), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

SUNSHINE HEART, INC.

WARRANT TO PURCHASE COMMON STOCK

Warrant No. CSW-*** Original Issue Date: *** **, 2010

SUNSHINE HEART, INC., a Delaware corporation (the ***"Company"***), hereby certifies that, for value received, *** or its permitted registered assigns (the ***"Holder"***), is entitled to purchase from the Company up to a total of *** shares (subject to adjustment as provided herein) of common stock, $0.001 par value per share (the ***"Common Stock"***), of the Company (each such share, a ***"Warrant Share"*** and all such shares, including any additional shares, if any, to be issued pursuant to the immediately following paragraph, the ***"Warrant Shares"***) at an exercise price equal to $0.032 per share (as adjusted from time to time as provided in Section 9 herein, the ***"Exercise Price"***), at any time and from time to time on or after the Closing Date (the ***"Trigger Date"***) and through and including 5:30 P.M., New York City time, on *** **, 2014 (the ***"Expiration Date"***), and subject to the following terms and conditions:

This Warrant (this ***"Warrant"***) is one of a series of similar warrants issued pursuant to that certain Securities Purchase Agreement, dated September 15, 2010, by and among the Company and the Purchasers identified therein (the ***"Purchase Agreement"***). All such warrants are referred to herein, collectively, as the ***"Warrants."*** Notwithstanding the foregoing, on or before September 30, 2011, the Company agrees to (the ***"Registration Requirements"***): (1) file with the Securities and Exchange Commission (the ***"SEC"***) a Form 10-12G registering the shares of the Company' Common Stock with the SEC and (2) file an application to list on a U.S. Stock exchange the Common Stock issued pursuant to the Purchase Agreement. In the event the Company does not satisfy the Registration Requirements, the number of Warrant Shares subject to this Warrant shall automatically increase by a number of Warrant Shares equal to ten percent (10%) of the number of Common Shares purchased by the original Holder of this Warrant pursuant to the Purchase Agreement. Notwithstanding anything in this Warrant to the contrary, any such additional Warrant Shares may be purchased pursuant to the exercise of this Warrant at

any time, or from time to time, on or after the date of issuance and through and including 5:30 P.M., New York City time, on September 30, 2015.

1. DEFINITIONS. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Purchase Agreement. All dollar amounts set forth herein shall refer to Australian currency.

2. REGISTRATION OF WARRANTS. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the ***"Warrant Register"***), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any registered assignee to which this Warrant is permissibly assigned hereunder) from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. REGISTRATION OF TRANSFERS. Subject to compliance with all applicable securities laws, the Company shall register the transfer of all or any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached as Schedule 2 hereto duly completed and signed, to the Company's transfer agent or to the Company at its address specified in the Purchase Agreement and (x) delivery, at the request of the Company, of an opinion of counsel reasonably satisfactory to the Company to the effect that the transfer of such portion of this Warrant may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws and (y) delivery by the transferee of a written statement to the Company certifying that the transferee is an "accredited investor" as defined in Rule 501(a) under the Securities Act, to the Company at its address specified in the Purchase Agreement. Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a ***"New Warrant"***) evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. Any New Warrant issued pursuant to a partial exercise of this Warrant or as a result of a transfer of this Warrant shall be deemed to have the Original Issue Date of *** **, 2010 which is the date that this Warrant was initially issued to such Holder or its predecessor. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations in respect of the New Warrant that the Holder has in respect of this Warrant. The Company shall prepare, issue and deliver at its own expense any New Warrant under this Section 3.

4. EXERCISE AND DURATION OF WARRANTS.

(a) All or any part of this Warrant shall be exercisable by the registered Holder in any manner permitted by Section 10 of this Warrant at any time and from time to time on or after the Trigger Date and through and including 5:30 P.M. New York City time, on the Expiration Date. At 5:30 P.M., New York City time, on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value and this Warrant shall be terminated and no longer outstanding.

(b) The Holder may exercise this Warrant by delivering to the Company (i) an exercise notice (whether via facsimile or otherwise), in the form attached as Schedule 1 hereto (the ***"Exercise Notice"***), completed and duly signed, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a "cashless exercise" if so indicated in the Exercise Notice and if a "cashless exercise" may occur at such time pursuant to Section 10 below), and the date on which the last of such items is delivered to the Company (as determined in accordance with the notice provisions hereof) is an ***"Exercise Date."*** The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. DELIVERY OF WARRANT SHARES.

(a) Upon exercise of this Warrant, the Company shall promptly (but in no event later than three Trading Days after the Exercise Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate (provided that, if a Registration Statement covering the resale of the Warrant Shares is not effective and the Holder directs the Company to deliver a certificate for the Warrant Shares in a name other than that of the Holder or an Affiliate of the Holder, it shall deliver to the Company on the Exercise Date an opinion of counsel reasonably satisfactory to the Company to the effect that the issuance of such Warrant Shares in such other name may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws), (i) a certificate for the Warrant Shares issuable upon such exercise, free of restrictive legends, or (ii) an electronic delivery of the Warrant Shares to the Holder's account at either CHESS Depositary Nominees Pty Ltd. which will hold legal title to the Warrant Shares on behalf of the Holder for its benefit through the issue of CHESS Depositary Interests that will be quoted on the stock market of the Australian Securities Exchange or the Depository Trust Company (***"DTC"***) or a similar organization, unless in the case of clause (i) and (ii) a registration statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder is not then effective or the Warrant Shares are not freely transferable without volume and manner of sale restrictions pursuant to Rule 144 under the Securities Act, in which case such Holder shall receive a certificate for the Warrant Shares issuable upon such exercise with appropriate restrictive legends. The Holder, or any Person permissibly so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date. If the Warrant Shares are to be issued free of all restrictive legends, the Company shall, upon the written request of the Holder, use its reasonable best efforts to deliver, or cause to be delivered, Warrant Shares hereunder electronically through DTC or another established clearing corporation performing similar functions, if available; provided, that, the Company may, but will not be required to, change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through such a clearing corporation. For purposes of this Warrant, ***"Trading Day"*** shall mean any day on which the Warrant Shares are traded on a U.S. stock exchange or, if inapplicable, the principal securities exchange or securities market on which the Warrant Shares are then traded.

(b) In addition to any other rights available to the Holder, if by the close of the third Trading Day after delivery of an Exercise Notice and the payment of the aggregate exercise

price in any manner permitted by Section 10 of this Warrant, the Company fails to deliver to the Holder a certificate (or make an electronic delivery) representing the required number of Warrant Shares in the manner required pursuant to Section 5(a), and if after such third Trading Day and prior to the receipt of such Warrant Shares, the Holder or the Holder's brokerage firm purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a ***"Buy-In"***), then the Company shall, within three (3) Trading Days after the Holder's request and in the Holder's sole discretion, either (1) pay in cash to the Holder an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the ***"Buy-In Price"***), at which point the Company's obligation to deliver such certificate (or make an electronic delivery) (and to issue such Warrant Shares) shall terminate or (2) promptly honor its obligation to deliver to the Holder a certificate or certificates (or make an electronic delivery) representing such Warrant Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) the number of shares of Common Stock purchased in the Buy-In, times (B) the closing bid price of a share of Common Stock on the Exercise Date.

6. CHARGES, TAXES AND EXPENSES. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; *provided*, *however*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or the Warrants in a name other than that of the Holder or an Affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. REPLACEMENT OF WARRANT. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction (in such case) and, in each case, a customary and reasonable indemnity or surety bond, if requested by the Company. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. RESERVATION OF WARRANT SHARES. The Company represents, warrants, covenants and agrees that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares that are issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price (including by "cashless exercise" if permitted hereunder) in accordance with the

terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company, without requiring any action to be taken or expense to be incurred by Holder, will take all such action as may be reasonably necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed.

9. CERTAIN ADJUSTMENTS. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares, (iii) combines its outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each such case the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii), (iii) or (iv) of this paragraph shall become effective immediately after the effective date of such subdivision or combination or reclassification.

(b) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, distributes to all holders of Common Stock for no consideration (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph) or (iii) rights, options or warrants to subscribe for or purchase any security, or (iv) any other asset (including cash or cash dividends) (in each case, ***"Distributed Property"***), then, upon any exercise of this Warrant that occurs after the record date fixed for determination of stockholders entitled to receive such distribution, the Holder shall be entitled to receive, in addition to the Warrant Shares otherwise issuable upon such exercise (if applicable), the Distributed Property that such Holder would have been entitled to receive in respect of such number of Warrant Shares had the Holder been the record holder of such Warrant Shares immediately prior to such record date without regard to any limitation on exercise contained therein.

(c) Change in Control. For the purpose of this Warrant, "***Change in Control***" means a merger or consolidation of the Company with or into any other corporation or corporations in which the stockholders of the Company immediately prior to the merger or consolidation do not own more than fifty percent (50%) of the outstanding voting power (assuming conversion of all convertible securities and the exercise of all outstanding options) of the surviving corporation or the sale, lease, licensing, transfer or other disposition of all or substantially all the assets of the Company, unless the requisite stockholders of the Company

elect, pursuant to the Certificate of Incorporation (as defined below), for such transaction or transactions not to be a change in control of the Company.

(i) Upon the written request of the Company, the Holder agrees that, in the event of an Change in Control that is not an asset sale and in which the sole consideration is cash, either (a) the Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Change in Control or (b) if the Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Change in Control. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as such Holder may request in connection with such contemplated Change in Control giving rise to such notice), which is to be delivered to the Holder not less than ten (10) days prior to the closing of the proposed Change in Control.

(ii) Upon the written request of the Company, the Holder agrees that, in the event of an Change in Control that is an "arms length" sale of all or substantially all of the Company's assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a "***True Asset Sale***"), either (a) the Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Change in Control or (b) if the Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as such Holder may request in connection with such contemplated Change in Control giving rise to such notice), which is to be delivered to the Holder not less than ten (10) days prior to the closing of the proposed Change in Control. As used herein "***Affiliate***" shall mean any person or entity that owns or controls directly or indirectly ten (10) percent or more of the stock of the Company, and any person or entity that controls or is controlled by or is under common control with such persons or entities.

(iii) Upon the written request of the Company, the Holder agrees that, in the event of a stock for stock Change in Control of the Company by a publicly traded acquirer if, on the record date for the Change in Control, the fair market value of the Warrant Shares (or other securities issuable upon exercise of this Warrant) is equal to or greater than two (2) times the Exercise Price, the Company may require the Warrant to be deemed automatically exercised and the Holder shall participate in the Change in Control as a holder of the Warrant Shares (or other securities issuable upon exercise of the Warrant) on the same terms as other holders of the same class of securities of the Company.

(iv) Upon the closing of any Change in Control other than those particularly described in subsections (i), (ii) and (iii) above, the successor entity, if any, and if applicable, shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Warrant Shares issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Shares were outstanding on the record date for the Change in Control and subsequent closing. The Exercise Price and/or number of Warrant Shares shall be adjusted accordingly.

(d) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section 9, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) Calculations. All calculations under this Section 9 shall be rounded to the nearest cent or up to the next share, as applicable.

(f) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly notify the Holders of the applicable adjustment, compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(g) **Notice of Corporate Events.** If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including, without limitation, any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Change in Control or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then, except if such notice and the contents thereof shall be deemed to constitute material non-public information, the Company shall deliver to the Holder a notice of such transaction at least ten (10) business days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction and the Company will take all reasonable steps to give Holder the practical opportunity to exercise this Warrant prior to such time; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

(h) **Special ASX Provision.** For so long as shares of the Company's capital stock (or CHESS Depositary Interests representing such shares) are listed or otherwise quoted on the stock market of the Australian Securities Exchange (the ***"ASX"***), the following provisions of this Section 9(h) shall apply.

(i) The Company will, in accordance with the listing rules of the ASX (the ***"ASX Listing Rules"***), make an application to have the Warrant Shares that are issued pursuant to an exercise of this Warrant, listed for official quotation on the market conducted by ASX. In the case of any pro-rata issue (other than a bonus issue), the Exercise Price will be reduced according to the formula set out for making such an adjustment in the ASX Listing Rules. In the case of a bonus issue, the number of Warrant Shares over which this Warrant is exercisable will, in accordance with the ASX Listing Rules, be increased by the number of

Warrant Shares which the Holder would have received if this Warrant had been exercised before the record date for the bonus issue. The Company will notify the ASX of the adjustments in accordance with the ASX Listing Rules.

(ii) In the event of any reorganisation (including consolidation, subdivisions, reduction or return) of the authorised or issued capital of the Company, the rights of the Holder will be changed to the extent necessary to comply with the ASX Listing Rules applying to a reorganisation of capital at the time of the reorganisation.

(iii) Upon reorganisation of the Company's capital, the rights of the Holder will, as required, be changed to comply with the ASX Listing Rules.

Other than as permitted under the ASX Listing Rules, the Warrant does not give the Holder any right to vote, receive dividends, participate in new share issues or grant any other rights to the Holder as a shareholder until Warrant Shares are allotted pursuant to the exercise of the Warrant. In the event the terms and conditions of this Section 9(h) conflict with the terms and conditions set forth in Sections 9(a)-(d) of this Warrant, the terms and conditions of this Section 9(h) shall control.

10. **PAYMENT OF EXERCISE PRICE.** The Holder shall pay the Exercise Price in immediately available funds; provided, however, that if, on any Exercise Date there is not an effective Registration Statement registering, or no current prospectus available for, the resale of the Warrant Shares by the Holder, then the Holder may, in its sole discretion, satisfy its obligation to pay the Exercise Price through a "cashless exercise", in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the Closing Sale Prices of the shares of Common Stock (as reported by Bloomberg Financial Markets) for the five (5) consecutive Trading Days ending on the date immediately preceding the Exercise Date.

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of this Warrant, ***"Closing Sale Price"*** means, for any security as of any date, the last trade price for such security on the principal securities exchange or trading market for such security, as reported by Bloomberg Financial Markets, or, if such exchange or trading market begins to operate on an extended hours basis and does not designate the last trade price, then the

last trade price of such security prior to 4:00 P.M., New York City time, as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no last trade price is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then the Board of Directors of the Company shall use its good faith judgment to determine the fair market value. The Board of Directors' determination shall be binding upon all parties absent demonstrable error. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

Notwithstanding anything herein to the contrary, on the Expiration Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 10.

11. LIMITATIONS ON EXERCISE.

(a) Notwithstanding anything to the contrary contained in this Warrant (other than the provisions of Section 11(b) below), the Company shall not effect any exercise of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant to the extent (but only to the extent) that, after giving effect to such issuance after exercise, the Holder (together with any person acting as a group with the Holder or the Holder's affiliates) would beneficially own in excess of 9.99% (the ***"Maximum Percentage"***) of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder) and of which warrants shall be exercisable (as among all warrants owned by the Holder) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership and as to the determination of any group) shall be determined by the holder in accordance with Section 13(d) of the Securities Exchange Act of 1934 (the ***"Exchange Act"***) and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) business day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities

Purchase Agreement. Each delivery of an Exercise Notice by the Holder will constitute a representation by the Holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of Shares requested by the Holder in such Exercise Notice is permitted under this paragraph.

(b) The provisions of Section 11(a) above shall not apply to any exercise by any Holder whose beneficial ownership of Common Stock immediately prior to the issuance of this Warrant (together with any person acting as a group with such Holder and such Holder's affiliates) exceeds the Maximum Percentage (an ***"Existing MP Holder"***), provided, however, if at any time after the date hereof an Existing MP Holder and its affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with such Holders for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) shall collectively beneficially own the Maximum Percentage or less, then such Holder may deliver a written notice to the Company (an ***"MP Notice"***) providing that such Holder irrevocably elects to be subject to the provisions of Section 11(a).

(c) Notwithstanding anything to the contrary contained in this Warrant, the Company shall not effect any exercise of this Warrant (including if held by an Existing MP Holder that has not delivered an MP Notice), and the Holder shall not have the right to exercise any portion of this Warrant to the extent (but only to the extent) that, after giving effect to such issuance after exercise, the Holder (together with any person acting as a group with the Holder or the Holder's affiliates) would beneficially own in excess of 19.99% (the ***"Applicable Percentage***") of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder) and of which warrants shall be exercisable (as among all warrants owned by the Holder) shall, subject to such Applicable Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership and as to the determination of any group) shall be determined by the Holder in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Applicable Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Applicable Percentage limitation. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) business day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. Each delivery of an Exercise Notice by a Holder will constitute

a representation by such Holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of Shares requested by the Holder in such Exercise Notice is permitted under this paragraph.

12. NO FRACTIONAL SHARES. No fractional Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares that would, otherwise be issuable, the number of Warrant Shares to be issued shall be rounded down to the next whole number and the Company shall pay the Holder in cash the fair market value (based on the Closing Sale Price) for any such fractional shares.

13. NOTICES. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement prior to 5:30 P.M., New York City time, on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement on a day that is not a Trading Day or later than 5:30 P.M., New York City time, on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next business day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the Purchase Agreement unless changed by such party by two (2) Trading Days' prior notice to the other party in accordance with this Section 13.

14. WARRANT AGENT. The Company shall serve as warrant agent under this Warrant. Upon thirty (30) days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. MISCELLANEOUS.

(a) No Rights as a Stockholder. Unless otherwise permitted in this Warrant, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganisation, issue of stock, reclassification of stock, consolidation, merger, amalgamation, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities

(upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

(b) Authorized Shares.

(i) The Company covenants that during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the trading market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

(ii) Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganisation, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant, and (c) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant.

(iii) Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(c) Successors and Assigns. Subject to compliance with applicable securities laws, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company without the written consent of the Holder except to a successor in the event of a Change in Control. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this

Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or their successors and assigns.

(d) Amendment and Waiver. Except as otherwise provided herein, the provisions of the Warrant may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder.

(e) Acceptance. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

(f) Governing Law; Jurisdiction. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE

LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THE PURCHASE AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. EACH PARTY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

(g) **Headings.** The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(h) **Severability.** In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby, and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(i) **Remedies.** The Company stipulates that the remedies at law of the Holder of this Warrant in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate and that, to the fullest extent permitted by law, such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

SUNSHINE HEART, INC.

By: ________________________________
Name:
Title:

NEITHER THIS SECURITY NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE ***"SECURITIES ACT"***), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

SUNSHINE HEART, INC.

WARRANT TO PURCHASE COMMON STOCK

Warrant No. CSW-*** Original Issue Date: *** **, 2010

SUNSHINE HEART, INC., a Delaware corporation (the ***"Company"***), hereby certifies that, for value received, *** or its permitted registered assigns (the ***"Holder"***), is entitled to purchase from the Company up to a total of *** shares (subject to adjustment as provided herein) of common stock, $0.001 par value per share (the ***"Common Stock"***), of the Company (each such share, a ***"Warrant Share"*** and all such shares, including any additional shares, if any, to be issued pursuant to the immediately following paragraph, the ***"Warrant Shares"***) at an exercise price equal to $0.028 per share (as adjusted from time to time as provided in Section 9 herein, the ***"Exercise Price"***), at any time and from time to time on or after the Closing Date (the ***"Trigger Date"***) and through and including 5:30 P.M., New York City time, on *** **, 2015 (the ***"Expiration Date"***), and subject to the following terms and conditions:

This Warrant (this ***"Warrant"***) is issued to the Holder in connection with that certain Securities Purchase Agreement, dated September 15, 2010, by and among the Company and the Purchasers identified therein (the ***"Purchase Agreement"***). All such warrants are referred to herein, collectively, as the ***"Warrants."*** Notwithstanding the foregoing, on or before September 30, 2011, the Company agrees to (the ***"Registration Requirements"***): (1) file with the Securities and Exchange Commission (the ***"SEC"***) a Form 10-12G registering the shares of the Company' Common Stock with the SEC and (2) file an application to list on a U.S. Stock exchange the Common Stock issued pursuant to the Purchase Agreement. In the event the Company does not satisfy the Registration Requirements, the number of Warrant Shares subject to this Warrant shall automatically increase by a number of Warrant Shares equal to ten percent (10%) of the number of Common Shares purchased by the original Holder of this Warrant pursuant to the Purchase Agreement. Notwithstanding anything in this Warrant to the contrary, any such additional Warrant Shares may be purchased pursuant to the exercise of this Warrant at any time, or from time to time, on or after the date of issuance and through and including 5:30 P.M., New York City time, on September 30, 2015.

1. DEFINITIONS. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Purchase Agreement. All dollar amounts set forth herein shall refer to Australian currency.

2. REGISTRATION OF WARRANTS. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the **"*Warrant Register*"**), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any registered assignee to which this Warrant is permissibly assigned hereunder) from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. REGISTRATION OF TRANSFERS. Subject to compliance with all applicable securities laws, the Company shall register the transfer of all or any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached as <u>Schedule 2</u> hereto duly completed and signed, to the Company's transfer agent or to the Company at its address specified in the Purchase Agreement and (x) delivery, at the request of the Company, of an opinion of counsel reasonably satisfactory to the Company to the effect that the transfer of such portion of this Warrant may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws and (y) delivery by the transferee of a written statement to the Company certifying that the transferee is an "accredited investor" as defined in Rule 501(a) under the Securities Act, to the Company at its address specified in the Purchase Agreement. Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a **"*New Warrant*"**) evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. Any New Warrant issued pursuant to a partial exercise of this Warrant or as a result of a transfer of this Warrant shall be deemed to have the Original Issue Date of *** **, 2010 which is the date that this Warrant was initially issued to such Holder or its predecessor. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations in respect of the New Warrant that the Holder has in respect of this Warrant. The Company shall prepare, issue and deliver at its own expense any New Warrant under this Section 3.

4. EXERCISE AND DURATION OF WARRANTS.

(a) All or any part of this Warrant shall be exercisable by the registered Holder in any manner permitted by Section 10 of this Warrant at any time and from time to time on or after the Trigger Date and through and including 5:30 P.M. New York City time, on the Expiration Date. At 5:30 P.M., New York City time, on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value and this Warrant shall be terminated and no longer outstanding.

(b) The Holder may exercise this Warrant by delivering to the Company (i) an exercise notice (whether via facsimile or otherwise), in the form attached as <u>Schedule 1</u> hereto (the ***"Exercise Notice"***), completed and duly signed, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a "cashless exercise" if so indicated in the Exercise Notice and if a "cashless exercise" may occur at such time pursuant to Section 10 below), and the date on which the last of such items is delivered to the Company (as determined in accordance with the notice provisions hereof) is an ***"Exercise Date."*** The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. DELIVERY OF WARRANT SHARES.

(a) Upon exercise of this Warrant, the Company shall promptly (but in no event later than three Trading Days after the Exercise Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate (provided that, if a Registration Statement covering the resale of the Warrant Shares is not effective and the Holder directs the Company to deliver a certificate for the Warrant Shares in a name other than that of the Holder or an Affiliate of the Holder, it shall deliver to the Company on the Exercise Date an opinion of counsel reasonably satisfactory to the Company to the effect that the issuance of such Warrant Shares in such other name may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws), (i) a certificate for the Warrant Shares issuable upon such exercise, free of restrictive legends, or (ii) an electronic delivery of the Warrant Shares to the Holder's account at either CHESS Depositary Nominees Pty Ltd. which will hold legal title to the Warrant Shares on behalf of the Holder for its benefit through the issue of CHESS Depositary Interests that will be quoted on the stock market of the Australian Securities Exchange or the Depository Trust Company (***"DTC"***) or a similar organization, unless in the case of clause (i) and (ii) a registration statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder is not then effective or the Warrant Shares are not freely transferable without volume and manner of sale restrictions pursuant to Rule 144 under the Securities Act, in which case such Holder shall receive a certificate for the Warrant Shares issuable upon such exercise with appropriate restrictive legends. The Holder, or any Person permissibly so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date. If the Warrant Shares are to be issued free of all restrictive legends, the Company shall, upon the written request of the Holder, use its reasonable best efforts to deliver, or cause to be delivered, Warrant Shares hereunder electronically through DTC or another established clearing corporation performing similar functions, if available; provided, that, the Company may, but will not be required to, change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through such a clearing corporation. For purposes of this Warrant, ***"Trading Day"*** shall mean any day on which the Warrant Shares are traded on a U.S. stock exchange or, if inapplicable, the principal securities exchange or securities market on which the Warrant Shares are then traded.

(b) In addition to any other rights available to the Holder, if by the close of the third Trading Day after delivery of an Exercise Notice and the payment of the aggregate exercise

price in any manner permitted by Section 10 of this Warrant, the Company fails to deliver to the Holder a certificate (or make an electronic delivery) representing the required number of Warrant Shares in the manner required pursuant to Section 5(a), and if after such third Trading Day and prior to the receipt of such Warrant Shares, the Holder or the Holder's brokerage firm purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a ***"Buy-In"***), then the Company shall, within three (3) Trading Days after the Holder's request and in the Holder's sole discretion, either (1) pay in cash to the Holder an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the ***"Buy-In Price"***), at which point the Company's obligation to deliver such certificate (or make an electronic delivery) (and to issue such Warrant Shares) shall terminate or (2) promptly honor its obligation to deliver to the Holder a certificate or certificates (or make an electronic delivery) representing such Warrant Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) the number of shares of Common Stock purchased in the Buy-In, times (B) the closing bid price of a share of Common Stock on the Exercise Date.

6. CHARGES, TAXES AND EXPENSES. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; *provided*, *however*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or the Warrants in a name other than that of the Holder or an Affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. REPLACEMENT OF WARRANT. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction (in such case) and, in each case, a customary and reasonable indemnity or surety bond, if requested by the Company. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. RESERVATION OF WARRANT SHARES. The Company represents, warrants, covenants and agrees that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares that are issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price (including by "cashless exercise" if permitted hereunder) in accordance with the

terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company, without requiring any action to be taken or expense to be incurred by Holder, will take all such action as may be reasonably necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed.

9. CERTAIN ADJUSTMENTS. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares, (iii) combines its outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each such case the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii), (iii) or (iv) of this paragraph shall become effective immediately after the effective date of such subdivision or combination or reclassification.

(b) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, distributes to all holders of Common Stock for no consideration (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph) or (iii) rights, options or warrants to subscribe for or purchase any security, or (iv) any other asset (including cash or cash dividends) (in each case, ***"Distributed Property"***), then, upon any exercise of this Warrant that occurs after the record date fixed for determination of stockholders entitled to receive such distribution, the Holder shall be entitled to receive, in addition to the Warrant Shares otherwise issuable upon such exercise (if applicable), the Distributed Property that such Holder would have been entitled to receive in respect of such number of Warrant Shares had the Holder been the record holder of such Warrant Shares immediately prior to such record date without regard to any limitation on exercise contained therein.

(c) Change in Control. For the purpose of this Warrant, "***Change in Control***" means a merger or consolidation of the Company with or into any other corporation or corporations in which the stockholders of the Company immediately prior to the merger or consolidation do not own more than fifty percent (50%) of the outstanding voting power (assuming conversion of all convertible securities and the exercise of all outstanding options) of the surviving corporation or the sale, lease, licensing, transfer or other disposition of all or substantially all the assets of the Company, unless the requisite stockholders of the Company

elect, pursuant to the Certificate of Incorporation (as defined below), for such transaction or transactions not to be a change in control of the Company.

(i) Upon the written request of the Company, the Holder agrees that, in the event of an Change in Control that is not an asset sale and in which the sole consideration is cash, either (a) the Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Change in Control or (b) if the Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Change in Control. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as such Holder may request in connection with such contemplated Change in Control giving rise to such notice), which is to be delivered to the Holder not less than ten (10) days prior to the closing of the proposed Change in Control.

(ii) Upon the written request of the Company, the Holder agrees that, in the event of an Change in Control that is an "arms length" sale of all or substantially all of the Company's assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a "***True Asset Sale***"), either (a) the Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Change in Control or (b) if the Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as such Holder may request in connection with such contemplated Change in Control giving rise to such notice), which is to be delivered to the Holder not less than ten (10) days prior to the closing of the proposed Change in Control. As used herein "***Affiliate***" shall mean any person or entity that owns or controls directly or indirectly ten (10) percent or more of the stock of the Company, and any person or entity that controls or is controlled by or is under common control with such persons or entities.

(iii) Upon the written request of the Company, the Holder agrees that, in the event of a stock for stock Change in Control of the Company by a publicly traded acquirer if, on the record date for the Change in Control, the fair market value of the Warrant Shares (or other securities issuable upon exercise of this Warrant) is equal to or greater than two (2) times the Exercise Price, the Company may require the Warrant to be deemed automatically exercised and the Holder shall participate in the Change in Control as a holder of the Warrant Shares (or other securities issuable upon exercise of the Warrant) on the same terms as other holders of the same class of securities of the Company.

(iv) Upon the closing of any Change in Control other than those particularly described in subsections (i), (ii) and (iii) above, the successor entity, if any, and if applicable, shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Warrant Shares issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Shares were outstanding on the record date for the Change in Control and subsequent closing. The Exercise Price and/or number of Warrant Shares shall be adjusted accordingly.

(d) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section 9, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) Calculations. All calculations under this Section 9 shall be rounded to the nearest cent or up to the next share, as applicable.

(f) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly notify the Holders of the applicable adjustment, compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(g) Notice of Corporate Events. If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including, without limitation, any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Change in Control or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then, except if such notice and the contents thereof shall be deemed to constitute material non-public information, the Company shall deliver to the Holder a notice of such transaction at least ten (10) business days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction and the Company will take all reasonable steps to give Holder the practical opportunity to exercise this Warrant prior to such time; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

(h) Special ASX Provision. For so long as shares of the Company's capital stock (or CHESS Depositary Interests representing such shares) are listed or otherwise quoted on the stock market of the Australian Securities Exchange (the ***"ASX"***), the following provisions of this Section 9(h) shall apply.

(i) The Company will, in accordance with the listing rules of the ASX (the ***"ASX Listing Rules"***), make an application to have the Warrant Shares that are issued pursuant to an exercise of this Warrant, listed for official quotation on the market conducted by ASX. In the case of any pro-rata issue (other than a bonus issue), the Exercise Price will be reduced according to the formula set out for making such an adjustment in the ASX Listing Rules. In the case of a bonus issue, the number of Warrant Shares over which this Warrant is exercisable will, in accordance with the ASX Listing Rules, be increased by the number of

Warrant Shares which the Holder would have received if this Warrant had been exercised before the record date for the bonus issue. The Company will notify the ASX of the adjustments in accordance with the ASX Listing Rules.

(ii) In the event of any reorganisation (including consolidation, subdivisions, reduction or return) of the authorised or issued capital of the Company, the rights of the Holder will be changed to the extent necessary to comply with the ASX Listing Rules applying to a reorganisation of capital at the time of the reorganisation.

(iii) Upon reorganisation of the Company's capital, the rights of the Holder will, as required, be changed to comply with the ASX Listing Rules.

Other than as permitted under the ASX Listing Rules, the Warrant does not give the Holder any right to vote, receive dividends, participate in new share issues or grant any other rights to the Holder as a shareholder until Warrant Shares are allotted pursuant to the exercise of the Warrant. In the event the terms and conditions of this Section 9(h) conflict with the terms and conditions set forth in Sections 9(a)-(d) of this Warrant, the terms and conditions of this Section 9(h) shall control.

10. PAYMENT OF EXERCISE PRICE. The Holder shall pay the Exercise Price in immediately available funds; provided, however, that upon the election of the Holder, the Holder may, in its sole discretion, satisfy its obligation to pay the Exercise Price through a "cashless exercise", in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y\,[(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the Closing Sale Prices of the shares of Common Stock (as reported by Bloomberg Financial Markets) for the five (5) consecutive Trading Days ending on the date immediately preceding the Exercise Date.

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of this Warrant, ***"Closing Sale Price"*** means, for any security as of any date, the last trade price for such security on the principal securities exchange or trading market for such security, as reported by Bloomberg Financial Markets, or, if such exchange or trading market begins to operate on an extended hours basis and does not designate the last trade price, then the last trade price of such security prior to 4:00 P.M., New York City time, as reported by

Bloomberg Financial Markets, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no last trade price is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then the Board of Directors of the Company shall use its good faith judgment to determine the fair market value. The Board of

Directors' determination shall be binding upon all parties absent demonstrable error. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

Notwithstanding anything herein to the contrary, on the Expiration Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 10.

11. LIMITATIONS ON EXERCISE.

(a) Notwithstanding anything to the contrary contained in this Warrant (other than the provisions of Section 11(b) below), the Company shall not effect any exercise of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant to the extent (but only to the extent) that, after giving effect to such issuance after exercise, the Holder (together with any person acting as a group with the Holder or the Holder's affiliates) would beneficially own in excess of 9.99% (the ***"Maximum Percentage"***) of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder) and of which warrants shall be exercisable (as among all warrants owned by the Holder) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership and as to the determination of any group) shall be determined by the holder in accordance with Section 13(d) of the Securities Exchange Act of 1934 (the ***"Exchange Act"***) and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) business day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. Each delivery of an Exercise Notice by the Holder will constitute a

representation by the Holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of Shares requested by the Holder in such Exercise Notice is permitted under this paragraph.

(b) The provisions of Section 11(a) above shall not apply to any exercise by any Holder whose beneficial ownership of Common Stock immediately prior to the issuance of this Warrant (together with any person acting as a group with such Holder and such Holder's affiliates) exceeds the Maximum Percentage (an ***"Existing MP Holder"***), provided, however, if at any time after the date hereof an Existing MP Holder and its affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with such Holders for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) shall collectively beneficially own the Maximum Percentage or less, then such Holder may deliver a written notice to the Company (an ***"MP Notice"***) providing that such Holder irrevocably elects to be subject to the provisions of Section 11(a).

(c) Notwithstanding anything to the contrary contained in this Warrant, the Company shall not effect any exercise of this Warrant (including if held by an Existing MP Holder that has not delivered an MP Notice), and the Holder shall not have the right to exercise any portion of this Warrant to the extent (but only to the extent) that, after giving effect to such issuance after exercise, the Holder (together with any person acting as a group with the Holder or the Holder's affiliates) would beneficially own in excess of 19.99% (the ***"Applicable Percentage***") of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder) and of which warrants shall be exercisable (as among all warrants owned by the Holder) shall, subject to such Applicable Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership and as to the determination of any group) shall be determined by the Holder in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Applicable Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Applicable Percentage limitation. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) business day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. Each delivery of an Exercise Notice by a Holder will constitute a representation by such Holder that it has evaluated the limitation set forth in this paragraph and

determined that issuance of the full number of Shares requested by the Holder in such Exercise Notice is permitted under this paragraph.

12. NO FRACTIONAL SHARES. No fractional Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares that would, otherwise be issuable, the number of Warrant Shares to be issued shall be rounded down to the next whole number and the Company shall pay the Holder in cash the fair market value (based on the Closing Sale Price) for any such fractional shares.

13. NOTICES. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement prior to 5:30 P.M., New York City time, on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement on a day that is not a Trading Day or later than 5:30 P.M., New York City time, on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next business day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the Purchase Agreement unless changed by such party by two (2) Trading Days' prior notice to the other party in accordance with this Section 13.

14. WARRANT AGENT. The Company shall serve as warrant agent under this Warrant. Upon thirty (30) days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. MISCELLANEOUS.

(a) No Rights as a Stockholder. Unless otherwise permitted in this Warrant, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, amalgamation, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase

any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

(b) Authorized Shares.

(i) The Company covenants that during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the trading market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

(ii) Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant, and (c) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant.

(iii) Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(c) Successors and Assigns. Subject to compliance with applicable securities laws, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company without the written consent of the Holder except to a successor in the event of a Change in Control. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this

Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or their successors and assigns.

(d) Amendment and Waiver. Except as otherwise provided herein, the provisions of the Warrant may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder.

(e) Acceptance. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

(f) Governing Law; Jurisdiction. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF. EACH PARTY HEREBY

IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THE PURCHASE AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. EACH PARTY HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

(g) **Headings.** The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(h) **Severability.** In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby, and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(i) **Remedies.** The Company stipulates that the remedies at law of the Holder of this Warrant in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate and that, to the fullest extent permitted by law, such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

SUNSHINE HEART, INC.

By: ____________________
Name: ____________________
Title: ____________________

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this ***"Agreement"***), dated as of July 21, 2011, is made by and among SUNSHINE HEART, INC., a Delaware corporation, with its principal offices at 7651 Anagram Drive, Eden Prairie, Minnesota 55344 (the ***"Company"***), and the investors (individually, a ***"Purchaser"*** and collectively, the ***"Purchasers"***) listed on the Schedule of Purchasers attached hereto as EXHIBIT A (the ***"Schedule of Purchasers"***).

RECITALS

The Company and each Purchaser is executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(2) of the Securities Act of 1933, as amended (the ***"Securities Act"***), and Rule 506 of Regulation D (***"Regulation D"***) as promulgated by the United States Securities and Exchange Commission (the ***"SEC"***) under the Securities Act; and in reliance upon, and in conformity with, the requirements of Regulation S (***"Regulation S"***) under the Securities Act.

On the terms and conditions stated in this Agreement, the Company wishes to sell and the Purchasers wish to purchase, in the aggregate, up to Fifteen Million Australian Dollars (A$15,000,000) in value of shares of the Company's Common Stock, par value US$0.0001 per share (the ***"Common Shares"***) and warrants, in substantially the form attached hereto as EXHIBIT B (the ***"Warrants"***), to acquire up to that number of additional shares of the Company's Common Stock equal to thirty percent (30%) of the number of Common Shares purchased by such Purchaser (rounded up to the nearest whole share)(the shares of the Company's Common Stock issuable upon exercise of or otherwise pursuant to the Warrants collectively are referred to herein as the ***"Warrant Shares***" which, together with the Common Shares and the Warrants are collectively referred to herein as the ***"Securities"***). The Common Shares and Warrant Shares are to be issued to CHESS Depositary Nominees Pty Ltd. (***"CDN"***) which will hold legal title to the Common Shares and Warrant Shares on behalf of the Purchasers for their benefit through the issue of CHESS Depositary Interests (***"CDIs"***) that will be quoted on the stock market of the Australian Securities Exchange (the ***"ASX"***).

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PURCHASE AND SALE OF COMMON SHARES AND ISSUANCE OF WARRANTS.

(a) Purchase Price. The Company hereby agrees to issue and sell to the Purchasers and, subject to and in reliance upon the representations, warranties, covenants, terms and conditions hereof, at the applicable Closing(s) (as hereinafter defined), the Purchasers, severally and not jointly, agree to purchase from the Company the number of Common Shares set forth opposite such Purchaser's name on the Schedule of Purchasers with respect to such Closing at a purchase price of A$0.04 (in Australian dollars) per share (the ***"Per Share Purchase Price"***). In no event shall the sale of the Common Shares and Warrants under this Agreement

exceed A$15,000,000 in value (not including proceeds received by the Company upon the exercise of the Warrants).

(b) Closings. The sale and purchase of the Common Shares and Warrants shall occur in one or more closings (each a ***"Closing"*** and collectively, the ***"Closings"***). Each Closing shall be held at the offices of Honigman Miller Schwartz and Cohn LLP at 350 East Michigan Avenue, Suite 300, Kalamazoo, MI 49007 at 10:00 a.m., local time, or at such other time and place, or remotely by facsimile or other electronic transmission, as the Company and the Purchasers purchasing the Common Shares and Warrants at such Closing shall agree.

(c) Initial Closing. Subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, the first closing of the sale and purchase of Securities under this Agreement in an amount of Five Million Australian Dollars (A$5,000,000) in value of the Shares (the ***"Initial Closing"***) shall take place on July 25, 2011 (or such other date and time as is mutually agreed to by the Company and the Purchasers participating in the Initial Closing). At the Initial Closing, the Company shall issue and sell to each Purchaser, and each Purchaser severally, but not jointly, shall purchase from the Company, that number of Common Shares as is set forth opposite such Purchaser's name in column (3) on the Schedule of Purchasers with respect to the Initial Closing; provided, however, that the aggregate number of Common Shares sold at the Initial Closing plus the Warrant Shares issuable in connection with the Warrants issued at the Initial Closing shall not exceed fifteen percent (15%) of the Company's ordinary securities on issue as of the date of the Initial Closing, as calculated in the formula set forth in SCHEDULE 4(F). The Common Shares shall be issued to CDN and the Purchasers shall be issued a corresponding number of CDIs. In addition, subject to the satisfaction (or waiver) of the conditions set forth in Sections 6 and 7 below, at the Initial Closing each Purchaser shall receive a Warrant to purchase a number of Warrant Shares as indicated in column (4) on the Schedule of Purchasers with respect to the Initial Closing. The Warrants shall have an exercise price equal to A$0.056 (in Australian dollars), subject to applicable adjustments.

(d) Subsequent Closings. Subject to receipt of the stockholder approval set forth in Section 4(f) for sales of Common Shares and Warrant Shares underlying Warrants, in the aggregate, in excess of fifteen percent (15%) of the Company's ordinary securities on issue as calculated in the formula set forth in SCHEDULE 4(F) as of the date of the Initial Closing, at any time after the Initial Closing, to the extent that (i) the Purchasers already a party to this Agreement (at the time determined, the ***"Existing Purchasers"***), and/or (ii) additional Purchasers reasonably acceptable to the Company (each an ***"Additional Purchaser"***), agree by execution of a counterpart of this Agreement entitled "Subsequent Closing Signature Page" (each, a "***Subsequent Closing Signature Page***") to purchase A$50,000 or any greater amount in value (unless such minimum amount is waived by the Company) of Common Shares and Warrants, which amount shall be set forth on such Subsequent Closing Signature Page, the Company shall, within three (3) days thereafter, hold an additional Closing with respect to the purchase of such Common Shares and Warrants (each a ***"Subsequent Closing"***, and with the Initial Closing, the ***"Closings"*** and each a ***"Closing"***); provided, however, that the aggregate purchase price of the Common Shares and Warrants issued at all Closings may not exceed Fifteen Million Australian Dollars (A$15,000,000) and provided further, however, that all Subsequent Closings shall occur on or before August 31, 2011, and only for so long as all of the conditions precedent to such Subsequent Closing set forth in Section 6 and Section 7 have been satisfied or waived. The terms of the transactions consummated at each Subsequent Closing shall be identical to the terms consummated at the Initial Closing, excepting the date of the Common Shares and Warrants issued. In connection with a Subsequent Closing, the Company shall amend the Schedule of Purchasers to reflect any additional purchase by the Existing Purchasers and to add any Additional Purchasers.

(e) **Form of Payment.** Except as may otherwise be agreed to among the Company and one or more of the Purchasers, on the date of each Closing, each Purchaser shall wire its Subscription Amount (as defined below) with respect to such Closing, in United States Dollars (determined using the rate of conversion from Australian Dollars to United States Dollars published in the Wall Street Journal (U.S.) on the Business Day immediately prior to the applicable Closing) and in immediately available funds, to the account set forth on EXHIBIT C hereto. On the date of each Closing, the Company shall irrevocably instruct its transfer agent to deliver to CDN one or more stock certificates, free and clear of all restrictive and other legends (except as expressly provided in Section 2(i) hereof), evidencing the number of Common Shares each Purchaser is purchasing at such Closing, as is set forth on (i) with respect to the Initial Closing, such Purchaser's signature page to this Agreement next to the heading "Number of Common Shares to be Acquired" and (ii) with respect to a Subsequent Closing, such Purchaser's Subsequent Closing Signature Page next to the heading "Number of Common Shares to be Acquired", in each case, with a corresponding number of CDIs to be issued to the Purchaser as set forth on the Securities Certificate Questionnaire included as EXHIBIT D hereto, with the holding statements for CDIs sent to the Purchasers within three (3) Business Days (as defined below) after such Closing. ***"Subscription Amount"*** means with respect to each Purchaser, (i) with respect to the Initial Closing, the aggregate amount to be paid for the Common Shares and Warrants purchased hereunder at the Initial Closing as indicated on such Purchaser's signature page to this Agreement next to the heading "Aggregate Purchase Price (Subscription Amount)" and (ii) with respect to a Subsequent Closing, the aggregate amount to be paid for the Common Shares and Warrants purchased hereunder at such Subsequent Closing as indicated on such Purchaser's Subsequent Closing Signature Page next to the heading "Aggregate Purchase Price (Subscription Amount)."

(f) **Closing Deliveries of the Company.** On or prior to each Closing, the Company shall issue, deliver or cause to be delivered to each Purchaser participating in such Closing the following (the ***"Company Deliverables"***):

(i) this Agreement, duly executed by the Company;

(ii) facsimile copies of one or more stock certificates, free and clear of all restrictive and other legends (except as provided in Section 2 hereof), evidencing the Common Shares subscribed for by Purchaser hereunder with respect to such Closing, registered in the name of CDN and with a corresponding number of CDIs to be issued to the Purchaser as set forth on the Securities Certificate Questionnaire included as EXHIBIT D hereto (the ***"Stock Certificates"***), with the holding statements for CDIs sent to the Purchasers within three (3) Business Days of such Closing;

(iii) a Warrant, executed by the Company and registered in the name of such Purchaser as set forth on the Securities Certificate Questionnaire included as EXHIBIT D

hereto, pursuant to which such Purchaser shall have the right to acquire such number of Warrant Shares as indicated in column (4) on the Schedule of Purchasers with respect to such Closing;

(iv) a certificate of the Secretary of the Company (the ***"Secretary's Certificate"***), dated as of the date of such Closing, (a) certifying the resolutions adopted by the Board of Directors of the Company or a duly authorized committee thereof approving the transactions contemplated by this Agreement and the other Transaction Documents, as defined herein, and the issuance of the Common Shares and Warrants, (b) certifying the current versions of the Company's Certificate of Incorporation (the ***"Certificate of Incorporation"***), as amended, and Bylaws of the Company (the ***"Bylaws"***) and (c) certifying as to the signatures and authority of persons signing the Transaction Documents and related documents on behalf of the Company;

(v) the Officer's Certificate referred to in Section 7(e); and

(vi) a certified copy of the Certificate of Incorporation, as certified by the Secretary of State of the State of Delaware, as of a date within ten (10) Business Days of the date of such Closing.

(g) **Closing Deliveries of the Purchasers.** On or prior to a Closing, each Purchaser participating in such Closing shall deliver or cause to be delivered to the Company the following (the ***"Purchaser Deliverables"***):

(i) this Agreement, duly executed by such Purchaser;

(ii) its Subscription Amount with respect to such Closing by wire transfer to the account set forth on EXHIBIT C attached hereto; and

(iii) a fully completed and duly executed Securities Certificate Questionnaire and Investor Questionnaire, reasonably satisfactory to the Company in the forms attached hereto as EXHIBIT D and EXHIBIT E, respectively.

2. **PURCHASER'S REPRESENTATIONS AND WARRANTIES.** Each Purchaser hereby, for itself and for no other Purchaser, represents and warrants as of the date hereof and as of the date of each Closing in which such Purchaser participates to the Company as follows:

(a) **Organization and Good Standing.** If the Purchaser is an entity, such Purchaser is a corporation, partnership or limited liability company duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization.

(b) **Authorization and Power.** Each Purchaser has the requisite power and authority to enter into and perform the Transaction Documents (as defined below) to which such Purchaser is a party and to purchase the Common Shares and Warrants being sold to it hereunder and any Warrant Shares to be issued upon exercise of Warrants. If Purchaser is an entity, the execution, delivery and performance of the Transaction Documents to which such Purchaser is a party by such Purchaser and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate or partnership action, and no further consent or authorization of such Purchaser or its Board of Directors, stockholders or partners, as the case may be, is required.

(c) No Public Sale or Distribution. Such Purchaser is acquiring the Securities for its own account and not with a view towards, or for resale in connection with, the public sale or distribution thereof, except pursuant to sales registered or exempted under the Securities Act; *provided, however*, that by making the representations herein, such Purchaser does not agree to hold any of the Securities for any minimum or other specific term and reserves the right to dispose of the Securities at any time in accordance with or pursuant to a registration statement or an exemption under the Securities Act and pursuant to the applicable terms of the Transaction Documents. Such Purchaser is acquiring the Common Shares and Warrants hereunder, and any Warrant Shares to be issued upon exercise of Warrants, in the ordinary course of its business. Such Purchaser does not presently have any agreement or understanding, directly or indirectly, with any Person to distribute any of the Securities. As used in this Agreement, ***"Person"*** means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof.

(d) Accredited Investor Status. Such Purchaser represents and warrants that it is an "accredited investor" within the meaning of Rule 501 of Regulation D, as promulgated under the Securities Act. Each Purchaser that is an entity formed for the specific purpose of purchasing the Common Shares and Warrants under this Agreement and any Warrant Shares to be issued upon exercise of Warrants represents and warrants that, to the best of such Purchaser's knowledge (after due inquiry), each equity owner of such Purchaser is also an "accredited investor" within the meaning of Regulation D, as promulgated under the Securities Act.

(e) Reliance on Exemptions. Such Purchaser understands that the Securities are being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part upon the truth and accuracy of, and such Purchaser's compliance with, the representations, warranties, agreements, acknowledgments and understandings of such Purchaser set forth herein in order to determine the availability of such exemptions and the eligibility of such Purchaser to acquire the Securities.

(f) Information and Exculpation.

(i) Such Purchaser and its advisors, if any, have been furnished with all materials relating to the business, finances, prospects and operations of the Company and materials relating to the offer and sale of the Securities that have been requested by such Purchaser as it has deemed necessary or appropriate to conduct its due diligence investigation and has sufficient knowledge and experience in investing in companies similar to the Company in terms of the Company's stage of development so as to be able to evaluate the risks and merits of its investment in the Company. Such Purchaser and its advisors, if any, have been afforded the opportunity to ask questions of the Company. Such Purchaser has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its acquisition of the Securities.

(ii) Such Purchaser acknowledges that it is making such investment based on the results of its own due diligence investigation of the Company, and such Purchaser has not relied on any information or advice furnished by or on behalf of the Agent (as defined below) in connection with the transactions contemplated hereby. Such Purchaser acknowledges that Agent has not made, and will not make, any representations and warranties with respect to the Company or the transactions contemplated hereby, and such Purchaser will not rely on any statements made by Agent, orally or in writing, to the contrary. Such Purchaser further acknowledges that Agent will not be responsible for the ultimate success of its investment in the Company. In light of the foregoing, to the fullest extent permitted by law, such Purchaser releases Agent, its employees, officers and affiliates from any liability with respect to such Purchaser's participation in the transactions contemplated hereby.

(g) No Governmental Review. Such Purchaser understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

(h) Transfer or Resale. Such Purchaser understands that: (i) the Securities have not been and are not being registered under the Securities Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) such Purchaser shall have delivered to the Company an opinion of counsel, in a form reasonably acceptable to the Company, to the effect that such Securities to be sold, assigned or transferred may be sold, assigned or transferred pursuant to an exemption from such registration, or (C) such Purchaser provides the Company with reasonable assurance that such Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A promulgated under the Securities Act, as amended, (or a successor rule thereto) (collectively, ***"Rule 144"***); (ii) any sale of the Securities made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144 and further, if Rule 144 is not applicable, any resale of the Securities under circumstances in which the seller (or the Person through whom the sale is made) may be deemed to be an underwriter (as that term is defined in the Securities Act) may require compliance with some other exemption under the Securities Act or the rules and regulations of the SEC thereunder; and (iii) neither the Company nor any other Person is under any obligation to register the Securities under the Securities Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder. The Securities may be pledged in connection with a bona fide margin account or other loan or financing arrangement secured by the Securities and such pledge of Securities shall not be deemed to be a transfer, sale or assignment of the Securities hereunder, and no Purchaser effecting a pledge of Securities shall be required to provide the Company with any notice thereof or otherwise make any delivery to the Company pursuant to this Agreement or any other Transaction Document, including, without limitation, this Section 2(h); provided, that such Purchaser and its pledgees make such pledge in accordance with applicable laws.

(i) Legends. Such Purchaser understands that the certificates or other instruments representing the Securities, until such time as the resale of the Securities have been registered under the Securities Act or are eligible for sale pursuant to Rule 144, shall bear any legend as required by the "blue sky" laws of any state and a restrictive legend in substantially the

following form (and a stop-transfer order may be placed against transfer of such stock certificates):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL, IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Securities upon which it is stamped or issue to such holder by electronic delivery at the applicable balance account at the Depository Trust Company (***"DTC"***) or CDN, as applicable, if, unless otherwise required by state securities laws, (i) such Securities are registered for resale under the Securities Act, (ii) in connection with a sale, assignment or other transfer, such holder provides the Company with an opinion of a law firm reasonably acceptable to the Company, in a form reasonably acceptable to the Company, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the Securities Act, or (iii) such holder provides the Company with reasonable assurance that the Securities can be sold, assigned or transferred pursuant to Rule 144 or Rule 144A. Any fees (with respect to the transfer agent, Company counsel or otherwise) associated with the issuance of such opinion or the removal of such legend shall be borne by the Company. If a legend is no longer required pursuant to the foregoing, the Company will no later than three (3) Business Days following the delivery by a Purchaser to the Company or the transfer agent (with notice to the Company) of a legended certificate or instrument representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer) deliver or cause to be delivered to such Purchaser a certificate or instrument (as the case may be) representing such Securities that is free from all restrictive legends. The Company may not make any notation on its records or give instructions to the transfer agent that enlarge the restrictions on transfer set forth in this Section 2(i). Certificates for Securities free from all restrictive legends may be transmitted by the transfer agent to a Purchaser by crediting the account of the Purchaser's prime broker with DTC as directed by such Purchaser.

(j) **Regulation S.** Each Purchaser with an address outside the United States further represents and warrants that:

(i) Such Purchaser is not a U.S. Person, as defined in SEC Rule 902 and is not purchasing the Securities for the account or benefit of a U.S. Person.

(ii) Such Purchaser acknowledges its understanding that the offer and sale of the Securities is intended to be exempt from the registration requirements of the Securities Act, by virtue of the exemption from registration provided by Regulation S promulgated thereunder. Such Purchaser is aware and understands that the Securities may be resold, pledged, assigned or otherwise disposed of to a U.S. Person or for the account or benefit of a U.S. Person prior to the expiration of the one (1)-year Distribution Compliance Period, as defined in Regulation S, which shall be for one (1) year following the date after sale pursuant to this Agreement, and thereafter only if the Securities are subsequently registered under the Securities Act or an exemption from such registration is available pursuant to Regulation S promulgated under the Securities Act or pursuant to another available exemption from registration. Such Purchaser further agrees not to engage in any hedging transactions with regard to the Securities prior to the expiration of the Distribution Compliance Period unless in compliance with the Securities Act. Upon request of such Purchaser, upon receipt by the Company of an opinion of counsel reasonably satisfactory to the Company to the effect that such legend is no longer required under the Securities Act or applicable state laws, as the case may be, the Company shall promptly cause the legend to be removed from any certificate for any Securities to be so transferred.

(iii) Such Purchaser understands that the certificates or other instruments representing the Securities shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS AND NEITHER SUCH SECURITIES NOR ANY INTEREST THEREIN MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR OTHERWISE TRANSFERRED EXCEPT (1) IN ACCORDANCE WITH THE PROVISIONS OF REGULATION S PROMULGATED UNDER THE SECURITIES ACT, AND BASED ON AN OPINION OF COUNSEL, WHICH COUNSEL AND OPINION ARE REASONABLY SATISFACTORY TO THE COMPANY, THAT THE PROVISIONS OF REGULATION S HAVE BEEN SATISFIED, (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR (3) PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, IN WHICH CASE THE HOLDER MUST, PRIOR TO SUCH TRANSFER, FURNISH TO THE COMPANY AN OPINION OF COUNSEL, WHICH COUNSEL AND OPINION ARE REASONABLY SATISFACTORY TO THE COMPANY, THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED, ASSIGNED OR OTHERWISE TRANSFERRED IN THE MANNER CONTEMPLATED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. HEDGING TRANSACTIONS INVOLVING THE SECURITIES REPRESENTED BY THIS CERTIFICATE

MAY NOT BE CONDUCTED UNLESS IN COMPLIANCE WITH THE SECURITIES ACT.

(k) **Validity; Enforcement.** This Agreement has been duly and validly authorized, executed and delivered on behalf of such Purchaser and shall constitute the legal, valid and binding obligations of such Purchaser enforceable against such Purchaser in accordance with its terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(l) **No Conflicts.** The execution, delivery and performance by such Purchaser of this Agreement and the consummation by such Purchaser of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Purchaser or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which such Purchaser is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Purchaser, except in the case of clauses (ii) and

(iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Purchaser to perform its obligations hereunder.

(m) **Residency.** Such Purchaser is a resident of that jurisdiction specified below its address on the Schedule of Purchasers.

(n) **No General Solicitation.** Each Purchaser acknowledges that the Securities were not offered to such Purchaser by means of any form of general or public solicitation or general advertising, or publicly disseminated advertisements or sales literature, including (i) any advertisement, article, notice or other communication published in any newspaper, magazine, website, or similar media, or broadcast over television or radio, or (ii) any seminar or meeting to which such Purchaser was invited by any of the foregoing means of communications.

(o) **Independent Investment.** No Purchaser has (i) agreed to act with any other Purchaser for the purpose of acquiring, holding, voting or disposing of the Securities purchased hereunder for purposes of Section 13(d) under the Securities Exchange Act of 1934, as amended (the ***"Exchange Act"***); (ii) entered or agreed to enter into a relevant agreement with any other Purchaser or other party for the purpose of controlling or influencing the composition of the Company's board or the conduct of the Company's affairs for the purposes of the Corporations Act 2001 (Cth); or (iii) acted, is acting or is proposing to act in concert with any other Purchaser or other party in relation to the Company's affairs for the purposes of the Corporations Act (Cth) 2001, and each Purchaser is acting independently with respect to its investment in the Securities.

(p) **Brokers.** Each Purchaser has no knowledge of any brokerage or finder's fees or commissions that are or will be payable by the Company or any of its Subsidiaries to any

broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person or entity, other than the Agent, with respect to the transactions contemplated by this Agreement.

(q) **Additional Acknowledgement.** Each Purchaser acknowledges and accepts that the Company may offer its securities to other U.S. investors and various Australian investors upon substantially similar terms and conditions as the Common Shares and Warrants being purchased pursuant to this Agreement.

3. **REPRESENTATIONS AND WARRANTIES OF THE COMPANY.** The Company hereby represents and warrants as of the date hereof and the date of each Closing (except for the representations and warranties that speak as of a specific date, which shall be made as of such date), to each of the Purchasers the following, except as set forth in the Schedules delivered herewith or disclosed in the reports and other documents filed by the Company with the Australian Securities and Investments Commission (the ***"ASIC"***). The Schedules shall be arranged in sections corresponding to the lettered subsections contained in this Section 3, and the disclosures in any subsection of the schedules shall qualify other subsections in this Section 3 to the extent it is reasonably apparent from a reading of the disclosure that such disclosure is applicable to such other subsections.

(a) **Organization and Qualification.** Each of the Company and its ***"Subsidiaries"*** (which for purposes of this Agreement means any entity (i) in which the Company, directly or indirectly, owns not less than 25% of the capital stock or holds a corresponding equity or similar interest and (ii) which has operations and material assets) are entities duly incorporated or organized, as the case may be, and validly existing in good standing under the laws of the jurisdiction in which they are incorporated or organized, as applicable, and have the requisite power and authority to own their properties and to carry on their business as now being conducted. Each of the Company and its Subsidiaries is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect. As used in this Agreement, ***"Material Adverse Effect"*** means any material adverse effect on the business, properties, assets, operations, results of operations, condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, or on the transactions contemplated hereby and the other Transaction Documents or by the agreements and instruments to be entered into in connection herewith or therewith, or on the authority or ability of the Company to perform its obligations under the Transaction Documents. The Company has no Subsidiaries except as set forth on SCHEDULE 3(A) or as disclosed in the ASIC Documents (as defined below).

(b) **Authorization; Enforcement; Validity.** The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and the Irrevocable Transfer Agent Instructions (as defined in Section 5(b)) (collectively, the ***"Transaction Documents"***) and to issue the Securities in accordance with the terms hereof and thereof. The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the Securities, have been duly authorized by the Company's

Board of Directors and no further filing, consent or authorization is required by the Company, its Board of Directors or its stockholders except for the approval of the Company's stockholders pursuant to Section 4(f) of this Agreement (the ***"Stockholder Approval"***). This Agreement and the other Transaction Documents have been duly executed and delivered by the Company, and subject to the receipt of the Stockholder Approval, constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(c) **Issuance of Securities.** The Securities are duly authorized and, upon issuance in accordance with the terms hereof, shall be validly issued and free from all preemptive or similar rights, taxes, liens and charges with respect to the issue thereof and the Securities shall be fully paid and nonassessable with the holders being entitled to all rights accorded to a holder of Securities. Assuming the accuracy of each of the representations and warranties set forth in Section 2 of this Agreement, the offer and issuance by the Company of the Securities is exempt from registration under the Securities Act.

(d) **No Conflicts.** The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the Securities) will not (i) result in a violation of any certificate of incorporation, certificate of formation, any certificate of designations or other constituent documents of the Company or any of its Subsidiaries, any capital stock of the Company or any of its Subsidiaries or bylaws of the Company or any of its Subsidiaries, or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) subject to the Company's receipt of the Stockholder Approval, result in a violation of any applicable law, rule, regulation, order, judgment or decree (including federal and state securities laws and regulations and the rules and regulations of The Australian Securities Exchange (the ***"Principal Market"***) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, except in the cases of clauses (ii) and (iii) such as would not reasonably be expected to have a Material Adverse Effect.

(e) Consents. The Company is not required to obtain any consent, authorization or order of, or make any filing or registration with, any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, in each case in accordance with the terms hereof or thereof (other than (w) the Company's receipt of the Stockholder Approval and the Principal Market's approval for quotation of the CDIs, (x) any consent, authorization or order that has been obtained as of the date hereof, (y) any filing or registration that has been made as of the date hereof or (z) any filings which may be required to be made by the Company with the SEC, the ASIC, state securities administrators or the Principal Market, subsequent to the Closing; provided that, for purposes of the representation made in this sentence, the Company is assuming and relying upon the accuracy of the relevant representations and agreements of the Purchasers herein). The Company is not in violation of the listing

requirements of the Principal Market and has no knowledge of any facts that would reasonably lead to delisting or suspension of the Company's Common Stock on the Principal Market in the foreseeable future.

(f) No General Solicitation; Placement Agent's Fees. Neither the Company nor any of its Subsidiaries, or to the Company's knowledge, any of its or their affiliates, nor any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Securities. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions (other than for Persons engaged by any Purchaser or its investment advisor) relating to or arising out of the transactions contemplated hereby. The Company acknowledges that it has engaged Summer Street Research Partners, Inc. and RBS Morgans Limited, as placement agents (collectively, the ***"Agent"***) in connection with the sale of the Common Shares and Warrants. Other than the Agent, neither the Company nor any of its Subsidiaries has engaged any other placement agent in connection with the sale of the Common Shares and Warrants.

(g) ASIC Documents; Financial Statements. During the one (1) year prior to the date hereof, the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the ASIC pursuant to the reporting requirements of the securities law of Australia (all of the foregoing filed during the one (1) year prior to the date hereof or prior to the date of the Closing and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the ***"ASIC Documents"***). As of their respective filing dates, the ASIC Documents complied in all material respects with the requirements of the rules and regulations of the ASIC applicable to the ASIC Documents, and none of the ASIC Documents, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of their respective filing dates, the financial statements of the Company included in the ASIC Documents complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the ASIC with respect thereto. Such financial statements have been prepared in accordance with Australian generally accepted accounting principles, consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments, which would not be material, either individually or in the aggregate, and to the extent that such unaudited statements exclude footnotes). There is no transaction, arrangement, or other relationship between the Company (or any Subsidiary) and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in its ASIC filings and is not so disclosed and would have or reasonably be expected to have a Material Adverse Effect.

(h) Absence of Certain Changes. Since June 30, 2010, other than as disclosed in the ASIC Documents or documents lodged with the Australian Securities Exchange,

(i) there has been no material adverse change and no material adverse development in the business, properties, operations, condition (financial or otherwise) or results of operations of the Company or its Subsidiaries, (ii) the Company and its Subsidiaries have not paid or declared any dividends or other distributions with respect to their capital stock and (iii) there has not been any change in the capital stock of the Company or its Subsidiaries other than the sale of the Common Shares and Warrants hereunder and grants, exercises, terminations, or forfeitures of securities under the Company's equity or compensation plans. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any bankruptcy law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact that would reasonably lead a creditor to do so. The Company is not, and after giving effect to the transactions contemplated hereby to occur at the Closings, the Company will not be, Insolvent (as defined below). For purposes of this Section 3(h), ***"Insolvent"*** means, with respect to any Person, (i) the present fair saleable value of such Person's assets is less than the amount required to pay such Person's total Indebtedness, (ii) such Person is unable to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, (iii) such Person intends to incur or believes that it will incur debts that would be beyond its ability to pay as such debts mature or (iv) such Person has unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted. For purposes of this Agreement: "***Indebtedness"*** of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services, including (without limitation) "capital leases" in accordance with generally accepted accounting principles (other than trade payables entered into in the ordinary course of business), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with generally accepted accounting principles, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above; and ***"Contingent Obligation"*** means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(i) Conduct of Business; Regulatory Permits. Neither the Company nor any of its Subsidiaries is in material violation of any term of or in default under its Certificate of Incorporation, any certificate of designations of any outstanding series of preferred stock of the Company or the Bylaws or their organizational charter or bylaws, respectively. Except as described in the ASIC Documents, neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except for possible violations which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, except as described in the ASIC Documents or documents lodged with the Australian Securities Exchange, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that would reasonably lead to delisting or suspension of the Company's Common Stock (represented by CDIs) by the Principal Market in the foreseeable future. During the past two (2) years prior to the date hereof, (i) the Company's Common Stock represented by CDIs has been designated for quotation or included for listing on the Principal Market, (ii) trading in the CDIs representing the Company's Common Stock has not been suspended by the ASIC or the Principal Market and (iii) the Company has received no communication, written or oral, from the ASIC or the Principal Market regarding the suspension or delisting of the CDIs representing the Company's Common Stock from the Principal Market. Except as described in the ASIC Documents or documents lodged with the Australian Securities Exchange, the Company and its subsidiaries hold, and are operating in material compliance with, such permits, registrations, licenses, accreditations, franchises, approvals, authorizations and clearances of applicable governmental authorities (collectively, the ***"Permits"***) required for the conduct of their respective businesses as currently conducted, except where the failure to possess such Permits would not reasonably be expected to have a Material Adverse Effect, and all such Permits are in full force and effect. Except as described in the ASIC Documents or documents lodged with the Australian Securities Exchange, neither the Company nor any Subsidiary has received, or has any reason to believe that it will receive, any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such Permit which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would reasonably be expected to result in a Material Adverse Effect.

(j) Equity Capitalization. As of the date hereof, the authorized capital stock of the Company consists of One Billion Nine Hundred Sixty Million (1,960,000,000) shares of Common Stock and Forty Million (40,000,000) shares of preferred stock. As of the date hereof, no shares of preferred stock are issued and outstanding. As of June 22, 2011, (w) One Billion Eighteen Million Eight Hundred Forty-Five Thousand Seven Hundred Ten (1,018,845,710) shares of Common Stock were issued and outstanding, (x) One Hundred Eighty-Six Million One Hundred Twenty-Five Thousand Seven Hundred Sixteen (186,125,716) shares were reserved for issuance pursuant to the Company's equity incentive plans, employee stock purchase plan and new-hire incentive plan, (y) Two Hundred Forty-Four Million One Hundred One Thousand Twenty (244,101,020) shares were reserved for issuance pursuant to outstanding warrants, and (z) Twenty-Four Million One Hundred Twenty-Five Thousand Seven Hundred Sixteen (24,125,716) shares were reserved for issuance pursuant to outstanding options. All of such outstanding shares have been, or upon issuance will be, validly issued and are fully paid and nonassessable. Except as set forth above in this Section 3(j) or on SCHEDULE 3(J), or as disclosed

in the ASIC Documents or documents lodged with the Australian Securities Exchange: (i) none of the Company's capital stock is subject to preemptive rights or any other similar rights or any liens or encumbrances suffered or permitted by the Company; (ii) there are no outstanding options, warrants, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries, (iii) there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any capital stock of the Company or any of its Subsidiaries; (iv) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the Securities Act; (v) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (vi) the Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement; and (vii) the Company has no liabilities or obligations required to be disclosed in the ASIC Documents but not so disclosed in the ASIC Documents, which, individually or in the aggregate, will have or would reasonably be expected to have a Material Adverse Effect. Except as otherwise contemplated by this Agreement, there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the Securities. The Company has furnished or made available to the Purchasers upon the Purchasers' request, true, correct and complete copies of the Certificate of Incorporation, as amended and as in effect on the date hereof, and the Bylaws, as amended and as in effect on the date hereof, and the terms of all securities convertible into, or exercisable or exchangeable for, shares of Common Stock and the material rights of the holders thereof in respect thereto.

(k) Absence of Litigation. Except as set forth in SCHEDULE 3(K) or as disclosed in the ASIC Documents or documents lodged with the Australian Securities Exchange, there is no action, suit, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, government agency, self-regulatory organization or body pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Company's Common Stock or any of the Company's Subsidiaries or any of the Company's or its Subsidiaries' officers or directors in their capacities as such.

(l) **Insurance.** The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as management of the Company believes to be prudent and customary in the businesses in which the Company and its Subsidiaries are engaged. Except as disclosed in the ASIC Documents, neither the Company nor any such Subsidiary has been refused any insurance coverage sought or applied for and neither the Company nor any such Subsidiary has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not reasonably be expected to have a Material Adverse Effect.

(m) **Employee Relations.**

(i) Neither the Company nor any of its Subsidiaries is a party to any collective bargaining agreement or employs any member of a union. The Company and its Subsidiaries believe that their relations with their employees are good. No named executive officer of the Company or any of its Subsidiaries has notified the Company or any such Subsidiary that such officer intends to leave the Company or any such Subsidiary or otherwise terminate such officer's employment with the Company or any such Subsidiary. No executive officer of the Company or any of its Subsidiaries, to the knowledge of the Company or any of its Subsidiaries, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company or any of its Subsidiaries to any liability with respect to any of the foregoing matters.

(ii) The Company and its Subsidiaries, to their knowledge, are in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(n) **Title.** The Company and its Subsidiaries have good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them which is material to the business of the Company and its Subsidiaries, in each case free and clear of all liens, encumbrances and defects except such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and any of its Subsidiaries. Any real property and facilities held under lease by the Company and any of its Subsidiaries are held by them under valid, subsisting and enforceable leases with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company and its Subsidiaries.

(o) **Intellectual Property Rights.** Except as specifically disclosed in the ASIC Documents (i) the Company owns or possesses sufficient rights to use all patents, patent rights, trademarks, copyrights, licenses, inventions, trade secrets, trade names and know-how (including trade secrets and other unpatented and/or unpatentable property or confidential information, systems, processes or procedures) (collectively, ***"Intellectual Property"***) described or referred to in the ASIC Documents as owned or possessed by them or that are necessary for the conduct of its business as now conducted as described in the ASIC Documents, except where the failure to currently own or possess would not have a Material Adverse Effect, (ii) to its knowledge, the Company is not infringing, and have not received any notice of any asserted infringement by the Company of any rights of a third party with respect to any Intellectual Property that, individually or in the aggregate, would have a Material Adverse Effect and (iii) the Company has not received any notice of, and has no knowledge of, infringement by a third party with respect to any Intellectual Property rights of the Company that, individually or in the aggregate, would have a Material Adverse Effect.

(p) **Compliance in Clinical Trials.** Except as described in the ASIC Documents or documents lodged with the Australian Securities Exchange (and solely to the extent any information contained in such ASIC Documents has not been amended, modified, supplemented, corrected, rescinded or otherwise withdrawn in subsequent material filed by the Company with the ASIC), the studies, tests and preclinical and clinical trials conducted by or on behalf of the Company and its Subsidiaries were and, if still pending, are being conducted in compliance with experimental protocols, procedures and controls pursuant to accepted professional scientific standards and all applicable laws and authorizations, including, without limitation, the Federal Food, Drug and Cosmetic Act and the rules and regulations promulgated thereunder, except where the failure to be in compliance has not resulted and would not reasonably be expected to result in a Material Adverse Effect and the Company and its Subsidiaries have not received any notices or correspondence from any applicable governmental authority requiring the termination, suspension or material modification of any studies, tests or preclinical or clinical trials conducted by or on behalf of the Company or its Subsidiaries.

(q) **Subsidiary Rights.** The Company has the unrestricted right to vote, and (subject to limitations imposed by applicable law) to receive dividends and distributions on, all capital securities of its Subsidiaries as owned by the Company.

(r) **Tax Status.** The Company and each of its Subsidiaries (i) has made or filed all foreign, federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject or has properly requested extensions thereof, (ii) has paid all taxes and other governmental assessments and charges that are material in amount, shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and (iii) has set aside on its books provision reasonably adequate for the payment of all taxes for periods subsequent to the periods to which such returns, reports or declarations apply. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim.

(s) **U.S. Real Property Holding Corporation.** The Company is not, nor has it ever been, a U.S. real property holding corporation within the meaning of Section 897 of the Internal Revenue Code of 1986, as amended, and the Company shall so certify upon any Purchaser's request.

(t) **No Integrated Offering**. None of the Company, its Subsidiaries or any of their affiliates, nor any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Securities under the Securities Act, whether through integration with prior offerings or otherwise, or cause this offering of the Securities to require approval of stockholders of the Company under any applicable stockholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated. None of the Company, its Subsidiaries, their affiliates nor any Person acting on their behalf will take any action or steps referred to in the preceding sentence that would require registration of the issuance of any of the Securities under the Securities Act or cause the offering of any of the Securities to be integrated with other offerings.

(u) Application of Takeover Protections; Rights Agreements. Except as set forth in SCHEDULE 3(U), the Company has not adopted any stockholder rights plan or similar arrangement relating to accumulations of beneficial ownership of the Company's Common Stock or a change in control of the Company. The Company and its Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Company's certificate of incorporation or other organizational documents or the laws of the jurisdiction of its incorporation or otherwise which is or could become applicable to any Purchaser solely as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and any Purchaser's ownership of the Securities.

(v) Environmental Matters. Except as disclosed in the ASIC Documents or documents lodged with the Australian Securities Exchange, neither the Company nor any of its Subsidiaries (i) is in violation of any statute, rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, ***"Environmental Laws"***), (ii) owns or operates any real property contaminated with any substance that is in violation of any Environmental Laws, (iii) is liable for any off-site disposal or contamination pursuant to any Environmental Laws, or (iv) is subject to any claim relating to any Environmental Laws; in each case, which violation, contamination, liability or claim has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and, to the Company's knowledge, there is no pending or threatened investigation that might lead to such a claim.

(w) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an "investment company," an affiliate of an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(x) Shell Company Status. The Company is not, and has never been, an issuer identified in Rule 144(i)(1).

(y) No Additional Agreements. The Company has no other agreements or understandings (including, without limitation, side letters) with any Purchaser to purchase Securities on terms that are different from those set forth herein.

(z) Disclosure. The Company confirms that neither it nor any of its officers or directors nor any other Person acting on its or their behalf has provided, and it has not authorized the Agent to provide, any Purchaser or its respective agents or counsel with any information that it believes constitutes or could reasonably be expected to constitute material, non-public information except insofar as the existence, provisions and terms of the Transaction Documents and the proposed transactions hereunder may constitute such information. The Company understands and confirms that each of the Purchasers will rely on the foregoing representations in effecting transactions in securities of the Company.

(aa) Reservation of Warrant Shares. The Company will reserve, free of any preemptive or similar rights of shareholders of the Company, a number of unissued shares of Common Stock, sufficient to issue and deliver the Warrant Shares upon the exercise of the Warrants.

(bb) Transactions With Affiliates and Employees. Except as set forth in the ASIC Documents or documents lodged with the Australian Securities Exchange, none of the officers or directors of the Company and, to the Company's knowledge, none of the employees of the Company is presently a party to any transaction (or to a presently contemplated transaction) with the Company or any Subsidiary (other than for services as employees, officers and directors).

(cc) Unlawful Payments. Neither the Company nor any of its Subsidiaries, nor any directors, officers, nor to the Company's knowledge, employees, agents or other Persons acting at the direction of or on behalf of the Company or any of its Subsidiaries has, in the course of its actions for, or on behalf of, the Company: (a) directly or indirectly, used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to foreign or domestic political activity; (b) made any direct or indirect unlawful payments to any foreign or domestic governmental officials or employees or to any foreign or domestic political parties or campaigns from corporate funds; (c) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended; or (d) made any other unlawful bribe, rebate, payoff, influence payment, kickback or other material unlawful payment to any foreign or domestic government official or employee.

(dd) Money Laundering Laws. The operations of each of the Company and any Subsidiary are and have been conducted at all times in compliance with the money laundering statutes of applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any applicable governmental agency (collectively, the "***Money Laundering Laws***") and to the Company's knowledge, no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company and/or any Subsidiary with respect to the Money Laundering Laws is pending or threatened.

(ee) OFAC. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee, affiliate or Person acting on behalf of the Company or any Subsidiary is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("***OFAC***"); and the Company will not knowingly directly or indirectly use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person or entity, towards any sales or operations in any country sanctioned by OFAC or for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

4. COVENANTS.

(a) Best Efforts. Each party shall use its best efforts timely to satisfy each of the covenants and conditions to be satisfied by it as provided in Sections 6 and 7 of this Agreement.

(b) Form D and Blue Sky. The Company agrees to file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof to any Purchaser upon request. The Company, on or before the date of each Closing, shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for or to qualify the Common Shares and Warrants for sale to the Purchasers at such Closing pursuant to this Agreement under applicable securities or "Blue Sky" laws of the states of the United States (or to obtain an exemption from such qualification), and shall provide evidence of any such action so taken upon Purchaser's request. The Company shall make all filings and reports as it reasonably determines are necessary relating to the offer and sale of the Common Shares and Warrants required under applicable securities or "Blue Sky" laws of the states of the United States following the date of each Closing; *provided, however*, the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction.

(c) Listing. The Company will use commercially reasonable efforts to have the Common Shares, the Warrant Shares and the CDIs representing such shares approved for quotation on ASX promptly after the Closing and maintain the quotation of such shares and CDIs on the ASX. Each Purchaser acknowledges that they cannot deal in the CDIs representing Common Shares until official quotation is granted in respect of the CDIs representing the Common Shares.

(d) Certain Fees and Expenses. The Company shall pay all transfer agent fees, stamp or transfer taxes and other taxes (not including income or similar taxes) and duties levied in connection with the sale and issuance of the applicable Securities. Except as otherwise expressly set forth in the Transaction Documents, each party to this Agreement shall bear its own fees and expenses in connection with the sale and issuance of the Securities to the Purchasers (including, without limitation, each party's legal, accounting and other expenses).

(e) Confidential Information. Each Purchaser represents to the Company that, at all times during the Company's offering of the Common Shares and Warrants, the Purchaser (i) has maintained in confidence all non-public information regarding the Company received by the Purchaser from the Company or its agents, including, without limitation, the existence of the transactions contemplated therein, (ii) has used all such non-public information only in connection with the evaluation of the transactions contemplated therein, and (iii) has not purchased or sold the Company's securities or any securities convertible or exchangeable for any of the Company's securities while in possession of such information, and that it will continue to comply with (i), (ii) and (iii) above until such information (x) becomes generally publicly available other than through a violation of this provision by the Purchaser or its agents or (y) is required to be disclosed in legal proceedings (such as by deposition, interrogatory, request for documents, subpoena, civil investigation demand, filing with any governmental authority or

similar process), provided, however, that before making any use or disclosure in reliance on this subparagraph (y) the Purchaser shall give the Company prior written notice specifying the circumstances giving rise thereto and will furnish only that portion of the non-public information which is legally required in the opinion of counsel to the Purchaser.

(f) Stockholder Approval. The Company shall, as promptly as reasonably practicable following the date of this Agreement, establish a record date for, duly call, give notice of, convene and hold an extraordinary general meeting of the Company's stockholders (the ***"EGM"***) for the purpose of obtaining the requisite stockholder approval required in connection with the Company's sale of Common Shares and Warrant Shares underlying Warrants under this Agreement, in the aggregate, in excess of fifteen percent (15%) of the Company's ordinary securities on issue as calculated in the formula set forth in SCHEDULE 4(F) as of the date of the Initial Closing, and shall use its reasonable best efforts to cause the EGM to occur as soon as reasonably practicable.

(g) Use of Proceeds. The Company intends to use the net proceeds from the sale of the Securities hereunder for general corporate purposes.

(h) Publicity. By 9:00 a.m., New York City time, on the Business Day immediately following the execution of this Agreement, the Company shall issue one or more press releases (collectively, the ***"Press Release"***) reasonably acceptable to the Purchasers disclosing all material terms of the transactions contemplated hereby and any other material, nonpublic information that the Company may have provided any Purchaser at any time prior to the filing of the Press Release. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser or any affiliate or investment adviser of any Purchaser, or include the name of any Purchaser or any affiliate or investment adviser of any Purchaser in any press release or filing with any regulatory agency or trading market, without the prior written consent of such Purchaser, except as required by law, in which case the Company shall provide such Purchaser with prior written notice of such disclosure. From and after the issuance of the Press Release, no Purchaser shall be in possession of any material, non public information received from the Company, any Subsidiary or any of their respective officers, directors or employees.

(i) Indemnification. In consideration of each Purchaser's execution and delivery of the Transaction Documents and acquiring the Securities thereunder and in addition to all of the Company's other obligations under this Agreement, the Company shall defend, protect, indemnify and hold harmless each Purchaser and each other holder of the Securities and all of their stockholders, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing Persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the ***"Indemnitees"***) from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and expenses in connection therewith (irrespective of whether any such Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the ***"Indemnified Liabilities"***), incurred by any Indemnitee as a result of, or arising out of, or relating to (i) any material misrepresentation or breach of any representation or warranty made by the Company in this Agreement or (ii) any breach of any covenant, agreement or obligation of the Company contained in this Agreement. The Company will not be liable to any Purchaser under this Agreement to the extent that a loss, claim, damage or liability is attributable to any Purchaser's breach of any of the representations, warranties, covenants or agreements made by such Purchaser in this Agreement or in the other Transaction Documents.

(j) **Participation Right**. From the date hereof through the first anniversary of the Initial Closing Date, neither the Company nor any of its Subsidiaries shall, directly or indirectly, effect any Subsequent Placement (as defined below) unless the Company shall have first complied with this Section 4(j). The Company acknowledges and agrees that the right set forth in this Section 4(j) is a right granted by the Company, separately, to each Purchaser. "***Subsequent Placement***" means the issuance, offer, sale, grant of any option or right to purchase, or other disposition of any equity security or any equity-linked or related security (including, without limitation, any "equity security" (as that term is defined under Rule 405 promulgated under the Securities Act), any Convertible Securities (as defined below), any debt, any preferred stock or any purchase rights. "***Convertible Securities***" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

(i) At least five (5) Business Days prior to any proposed or intended Subsequent Placement, the Company shall deliver to each Purchaser a written notice of its proposal or intention to effect a Subsequent Placement (each such notice, a "***Pre-Notice***"), which Pre-Notice shall not contain any information (including, without limitation, material, non-public information) other than: (i) a statement that the Company proposes or intends to effect a Subsequent Placement and (ii) a statement informing such Purchaser that it is entitled to receive an Offer Notice (as defined below) with respect to such Subsequent Placement upon its written request. Upon the written request of a Purchaser within three (3) Business Days after the Company's delivery to such Purchaser of such Pre-Notice, and only upon a written request by such Purchaser, the Company shall promptly, but no later than one (1) Business Day after such request, deliver to such Purchaser an irrevocable written notice (the "***Offer Notice***") of any proposed or intended issuance or sale or exchange (the "***Offer***") of the securities being offered (the "***Offered Securities***") in a Subsequent Placement, which Offer Notice shall (w) identify and describe the Offered Securities, (x) describe the price and other terms upon which they are to be issued, sold or exchanged, and the number or amount of the Offered Securities to be issued, sold or exchanged, (y) identify the Persons (if known) to which or with which the Offered Securities are to be offered, issued, sold or exchanged and (z) offer to issue and sell to or exchange with such Purchaser in accordance with the terms of the Offer an aggregate of twenty-five percent (25%) of the Offered Securities, provided that the number of Offered Securities which such Purchaser shall have the right to subscribe for under this Section 4(j) shall be based on such Purchaser's pro rata portion of the aggregate number of Common Shares purchased hereunder by all Purchasers (the "***Basic Amount***").

(ii) To accept an Offer, in whole or in part, such Purchaser must deliver a written notice to the Company prior to the end of the third (3rd) Business Day after such Purchaser's receipt of the Offer Notice (the "***Offer Period***"), setting forth the portion of such Purchaser's Basic Amount that such Purchaser elects to purchase (the "***Notice of

Acceptance***"). Notwithstanding the foregoing, if the Company desires to modify or amend the terms and conditions of the Offer prior to the expiration of the Offer Period, the Company may deliver to each Purchaser a new Offer Notice and the Offer Period shall expire on the third (3rd) Business Day after such Purchaser's receipt of such new Offer Notice.

(iii) The Company shall have five (5) Business Days from the expiration of the Offer Period above (i) to offer, issue, sell or exchange all or any part of such Offered Securities as to which a Notice of Acceptance has not been given by a Purchaser (the "***Refused Securities***") pursuant to a definitive agreement(s) (the "***Subsequent Placement Agreement***"), but only to the offerees described in the Offer Notice (if so described therein) and only upon terms and conditions (including, without limitation, unit prices and interest rates) that are not more favorable to the acquiring Person or Persons or less favorable to the Company than those set forth in the Offer Notice and (ii) to publicly announce via press release (a) the execution of such Subsequent Placement Agreement, and (b) either (x) the consummation of the transactions contemplated by such Subsequent Placement Agreement or (y) the termination of such Subsequent Placement Agreement.

(iv) In the event the Company shall propose to sell less than all the Refused Securities (any such sale to be in the manner and on the terms specified in Section 4(j)(iii) above), then such Purchaser may, at its sole option and in its sole discretion, reduce the number or amount of the Offered Securities specified in its Notice of Acceptance to an amount that shall be not less than the number or amount of the Offered Securities that such Purchaser elected to purchase pursuant to Section 4(j)(ii) above multiplied by a fraction, (i) the numerator of which shall be the number or amount of Offered Securities the Company actually proposes to issue, sell or exchange (including Offered Securities to be issued or sold to Purchasers pursuant to this Section 4(j) prior to such reduction) and (ii) the denominator of which shall be the original amount of the Offered Securities. In the event that any Purchaser so elects to reduce the number or amount of Offered Securities specified in its Notice of Acceptance, the Company may not issue, sell or exchange more than the reduced number or amount of the Offered Securities unless and until such securities have again been offered to the Purchasers in accordance with Section 4(j)(i) above.

(v) Upon the closing of the issuance, sale or exchange of all or less than all of the Refused Securities, such Purchaser shall acquire from the Company, and the Company shall issue to such Purchaser, the number or amount of Offered Securities specified in its Notice of Acceptance. The purchase by such Purchaser of any Offered Securities is subject in all cases to the preparation, execution and delivery by the Company and such Purchaser of a separate purchase agreement relating to such Offered Securities reasonably satisfactory in form and substance to such Purchaser and its counsel.

(vi) Any Offered Securities not acquired by a Purchaser or other Persons in accordance with this Section 4(j) may not be issued, sold or exchanged until they are again offered to such Purchaser under the procedures specified in this Agreement.

(vii) Notwithstanding anything to the contrary in this Section 4(j) and unless otherwise agreed to by such Purchaser, the Company shall either confirm in writing to such Purchaser that the transaction with respect to the Subsequent Placement has been

abandoned or shall publicly disclose its intention to issue the Offered Securities, in either case in such a manner such that such Purchaser will not be in possession of any material, non-public information, by the tenth (10th) Business Day following delivery of the Offer Notice. If by such tenth (10th) Business

Day, no public disclosure regarding a transaction with respect to the Offered Securities has been made, and no notice regarding the abandonment of such transaction has been received by such Purchaser, such transaction shall be deemed to have been abandoned and such Purchaser shall not be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries. Should the Company decide to pursue such transaction with respect to the Offered Securities, the Company shall provide such Purchaser with another Offer Notice in accordance with, and subject to, the terms of this Section 4(j) and such Purchaser will again have the right of participation set forth in this Section 4(j). The Company shall not be permitted to deliver more than one Offer Notice to such Purchaser in any sixty (60) day period, except as expressly contemplated by the last sentence of Section 4(j)(ii).

(viii) The restrictions contained in this Section 4(j) shall not apply in connection with the issuance of any Excluded Securities (as defined below). The Company shall not circumvent the provisions of this Section 4(j) by providing terms or conditions to one Purchaser that are not provided to all. "***Excluded Securities***" means (A) shares of Common Stock or options to purchase Common Stock (including the issuance of Common Stock upon the exercise of such options) to consultants directors, officers or employees of the Company in their capacity as such pursuant to an Approved Share Plan (as defined below), provided that the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Purchasers; (B) shares of Common Stock issued upon the conversion or exercise of Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Share Plan that are covered by clause (A) above) issued prior to the date hereof, provided that the conversion or exercise price of any such Convertible Securities is not lowered, none of such Convertible Securities are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities are otherwise materially changed in any manner that adversely affects any of the Purchasers; (C) the Common Shares, (D) the Warrants, (E) the Warrant Shares (F) any securities of the Company issued or issuable pursuant to any rights or agreements, options, warrants or convertible securities outstanding as of the date of this Agreement, (G) shares of the Company's Common Stock issued or issuable in connection with any stock split, stock dividend or subdivision of the Company's Common Stock, (H) shares of the Company's Common Stock issued or issuable pursuant to any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution or equipment lessor approved by the board of Directors of the Company and (I) any equity securities of the Company issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by the board of directors of the Company. "***Approved Share Plan***" means the Company's 2002 Stock Plan, the Company's 2011 Equity Incentive Plan, the Company's employee stock purchase plan and any other employee benefit plan which has been approved by the board of directors of the Company prior to or subsequent to the date hereof pursuant to which shares of Common Stock and options to purchase Common Stock may be issued to any consultant, employee, officer or director for services provided to the Company in their capacity as such.

(ix) Notwithstanding the forgoing, in lieu of giving notice to the Purchasers prior to any Subsequent Placement as provided in Section 4(j), the Company may elect to give notice to the Purchasers within thirty (30) days after the closing of an Subsequent Placement. Such notice shall describe the type, price and terms of the Subsequent Placement. Each Purchaser shall have twenty (20) days from the date of receipt of such notice to elect to purchase up to the number of shares that such Purchaser would have been entitled to purchase under the terms and conditions of this Section 4(j). Such purchase shall be on the same terms and conditions and at the same price as the Subsequent Placement. The closing of such sale shall occur within sixty (60) days of the date of notice to the Purchasers.

(x) Unless the Board of Directors of the Company elects otherwise, in the event Purchaser fails to purchase its *pro rata* share pursuant to this Section 4(j), then such Purchaser shall no longer have any rights pursuant to this Section 4 relating to any Subsequent Placement.

(xi) Notwithstanding the foregoing, the Company shall not be required to offer or sell any securities to any Purchaser that would cause the Company to be in violation of applicable federal or state securities laws by virtue of such offer or sale.

5. REGISTRAR; TRANSFER AGENT INSTRUCTIONS.

(a) Transfer Agent. The Company shall engage and maintain, at its expense, a registrar and transfer agent for the Common Stock.

(b) Transfer Agent Instructions. The Company shall issue irrevocable instructions to its transfer agent, and any subsequent transfer agent, to issue certificates or credit shares to the applicable balance accounts at the DTC, registered in the name of CDN, for the Common Shares and Warrant Shares in such amounts as specified from time to time by each Purchaser to the Company in the form of EXHIBIT F attached hereto (the ***"Irrevocable Transfer Agent Instructions"***). The Company represents and warrants that no instruction other than the Irrevocable Transfer Agent Instructions referred to in this Section 5, and stop transfer instructions to give effect to Section 2(h) hereof, will be given by the Company to its transfer agent with respect to the Common Shares or Warrant Shares, and that the Common Shares and Warrant Shares shall otherwise be freely transferable on the books and records of the Company as and to the extent provided in this Agreement and the other Transaction Documents.

(c) Breach. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to a Purchaser. Accordingly, the Company acknowledges that the remedy at law for a breach of its obligations under this Section 5 will be inadequate and agrees, in the event of a breach or threatened breach by the Company of the provisions of this Section 5, that a Purchaser shall be entitled, in addition to all other available remedies, to an order and/or injunction restraining any breach and requiring immediate issuance and transfer, without the necessity of showing economic loss and without any bond or other security being required.

6. CONDITIONS TO THE COMPANY'S OBLIGATION TO CLOSE. The obligation of the Company hereunder to issue and sell the Common Shares and Warrants to each Purchaser at a

Closing is subject to the satisfaction, at or before such Closing, of each of the following conditions, provided that these conditions are for the Company's sole benefit and may be waived by the Company at any time in its sole discretion by providing each Purchaser participating in such Closing with prior written notice thereof:

(a) Such Purchaser shall have executed each of the Transaction Documents to which it is a party and delivered the same to the Company.

(b) Such Purchaser and each other Purchaser shall have delivered to the Company the applicable Subscription Amount for the Common Shares and Warrants being purchased by the Purchasers at such Closing by wire transfer of immediately available funds pursuant to the wire instructions provided by the Company.

(c) The representations and warranties of such Purchaser shall be true and correct in all material respects as of the date when made and as of the date of such Closing as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date), and such Purchaser shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by such Purchaser at or prior to the date of such Closing.

(d) Such Purchaser shall have delivered its Purchaser Deliverables in accordance with Section 1(d).

(e) With respect to each Subsequent Closing (and not with respect to the Initial Closing), the issuance of Common Shares and Warrants pursuant to this Agreement is approved by the requisite affirmative vote of the holders entitled to vote thereon at the EGM for all purpose including ASX Listing Rule 7.1.

7. CONDITIONS TO EACH PURCHASER'S OBLIGATION TO CLOSE. The obligation of each Purchaser hereunder to purchase the Common Shares and Warrants at a Closing is subject to the satisfaction, at or before the date of such Closing, of each of the following conditions, provided that these conditions are for such Purchaser's sole benefit and may be waived by such Purchaser at any time in its sole discretion by providing the Company with prior written notice thereof:

(a) The Company shall have duly executed and delivered to such Purchaser each of (i) the Transaction Documents and (ii) the Common Shares (in such amounts as indicated on the Schedule of Purchasers with respect to such Closing) and the Warrants to be issued to such Purchaser at such Closing.

(b) The Company shall have delivered to such Purchaser a copy of the Irrevocable Transfer Agent Instructions, in the form of EXHIBIT F attached hereto, which instructions shall have been delivered to and acknowledged in writing by the Company's transfer agent.

(c) The Common Stock represented by CDIs (i) shall be approved for quotation on the Principal Market and (ii) shall not have been suspended, as of the date of such

Closing, by the ASIC or the Principal Market from trading on the Principal Market nor shall suspension by the ASIC or the Principal Market have been threatened, as of the date of such Closing, either (A) in writing by the ASIC or the Principal Market or (B) by falling below the minimum listing maintenance requirements of the Principal Market.

(d) The Company shall have delivered the Company Deliverables in accordance with Section 1(f).

(e) The representations and warranties of the Company shall be true and correct as of the date when made and as of the date of such Closing as though made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specified date) and the Company shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by the Transaction Documents to be performed, satisfied or complied with by the Company at or prior to the date of such Closing. Such Purchaser shall have received a certificate, executed by the Chief Executive Officer of the Company, dated as of the date of such Closing, to the foregoing effect and as to such other matters as may be reasonably requested by such Purchaser, in the form attached hereto as EXHIBIT G.

(f) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or governmental authority of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(g) With respect to each Subsequent Closing (and not with respect to the Initial Closing), the issuance of Common Shares and Warrants pursuant to this Agreement is approved by the requisite affirmative vote of the holders entitled to vote thereon at the EGM for all purpose including ASX Listing Rule 7.1.

8. TERMINATION. In the event that the Initial Closing shall not have occurred on or before forty (40) Business Days from the date hereof due to the Company's or with respect to those Purchasers participating in the Initial Closing, such Purchasers' failure to satisfy the conditions set forth in Sections 6 and 7 above (and the nonbreaching party's failure to waive such unsatisfied condition(s)), the nonbreaching party shall have the option to terminate this Agreement with respect to such breaching party at the close of business on such date without liability of any party to any other party. As used herein, ***"Business Day"*** means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

9. MISCELLANEOUS.

(a) **Governing Law; Jurisdiction.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City

of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper.

(b) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other parties; provided that a facsimile signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile signature.

(c) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(d) Severability. If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

(e) Entire Agreement; Amendments. This Agreement and the other Transaction Documents supersede all other prior oral or written agreements between the Purchasers, the Company, their affiliates and Persons acting on their behalf with respect to the matters discussed herein, and this Agreement, the other Transaction Documents and the instruments referenced herein and therein contain the entire understanding of the parties with respect to the matters covered herein and therein and, except as specifically set forth herein or therein, neither the Company nor any Purchaser makes any representation, warranty, covenant or undertaking with respect to such matters. No provision of this Agreement may be amended other than by an instrument in writing signed by the Company and the Purchasers holding Common Shares representing at least a majority of the amount of the Common Shares purchased pursuant to this Agreement, or, if prior to the date of the Initial Closing, the Purchasers listed on the Schedule of Purchasers as being obligated to purchase at least a majority of the amount of the Common Shares. No provision hereof may be waived other than by an instrument in writing signed by the party against whom enforcement is sought. No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of any of the Transaction Documents unless the same consideration also is offered to all of the parties to the Transaction Documents or holders of Common Shares, as the case may be. The Company has not, directly or indirectly, made any agreements with any Purchasers relating to the terms or conditions of the transactions contemplated by the Transaction Documents except as set forth in the Transaction Documents. Without limiting the foregoing, the Company confirms that, except as set forth in this Agreement, no Purchaser has made any commitment or promise or has any other obligation to provide any financing to the Company or otherwise.

(f) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be

deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one Business Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and facsimile numbers for such communications shall be:

if to the Company:

Sunshine Heart, Inc.
7651 Anagram Drive
Eden Prairie, Minnesota 55344
Telephone: (952) 345-4201
Facsimile: (952) 244-0181
Attention: David A. Rosa, CEO

with a copy (for informational purposes only) to:

Honigman Miller Schwartz and Cohn LLP
350 East Michigan Avenue, Suite 300
Kalamazoo, Michigan 49007
Telephone: (269) 337-7702
Facsimile: (269) 337-7703
Attention: Phillip D. Torrence, Esq.

if to the Transfer Agent:

Link Market Services Limited
Level 12, 680 George Street, Sydney, NSW 2000
Telephone: +61 2 8280 7447
Facsimile: +61 2 9287 0305
Attention: Rakitha Amaranath

if to a Purchaser, to its address and facsimile number set forth on the Schedule of Purchasers, with copies to such Purchaser's representatives as set forth on the Schedule of Purchasers;

or to such other address and/or facsimile number and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's facsimile machine containing the time, date, recipient facsimile number and an image of the first page of such transmission or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by facsimile or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

(g) **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Common Shares and Warrants. The Company shall not assign this Agreement or any

rights or obligations hereunder without the prior written consent of the holders of at least a majority of the aggregate number of Common Shares issued and issuable hereunder. A Purchaser may assign some or all of its rights hereunder without the consent of the Company, in which event such assignee shall be deemed to be a Purchaser hereunder with respect to such assigned rights. Notwithstanding the foregoing, the representations and warranties of the Company set forth in this Agreement shall not extend to any successors or assigns.

(h) **No Third Party Beneficiaries.** This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, other than each Indemnitees referred to in Section 4(i), except that the Agent may rely upon the representations and warranties contained in Sections 2 and 3 hereof.

(i) **Survival.** Unless this Agreement is terminated under Section 8, the representations and warranties of the Company contained in Section 3 and the representations and warranties of the Purchasers contained in Section 2 shall survive the Closing for twelve (12) months, and the representations, warranties, agreements and covenants set forth in Sections 4, 5 and 9 shall survive the Closing indefinitely. Each Purchaser shall be responsible only for its own representations, warranties, agreements and covenants hereunder.

(j) **Further Assurances.** Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(k) **No Strict Construction.** The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

(l) **Remedies.** Each Purchaser and each holder of the Securities shall have all rights and remedies set forth in the Transaction Documents and all rights and remedies which such holders have been granted at any time under any other agreement or contract and all of the rights which such holders have under any law. Any Person having any rights under any provision of this Agreement shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law. Furthermore, the Company recognizes that in the event that it fails to perform, observe, or discharge any or all of its obligations under the Transaction Documents, any remedy at law may prove to be inadequate relief to the Purchasers. The Company therefore agrees that the Purchasers shall be entitled to seek temporary and permanent injunctive relief in any such case without the necessity of proving actual damages and without posting a bond or other security.

(m) **Payment Set Aside.** To the extent that the Company makes a payment or payments to the Purchasers hereunder or pursuant to any of the other Transaction Documents or the Purchasers enforce or exercise their rights hereunder or thereunder, and such payment or payments or the proceeds of such enforcement or exercise or any part thereof are subsequently

invalidated, declared to be fraudulent or preferential, set aside, recovered from, disgorged by or are required to be refunded, repaid or otherwise restored to the Company, a trustee, receiver or any other Person under any law (including, without limitation, any bankruptcy law, foreign, state or federal law, common law or equitable cause of action), then to the extent of any such restoration the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

(n) **Independent Nature of Purchasers' Obligations and Rights.** The obligations of each Purchaser under any Transaction Document are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under any Transaction Document. Nothing contained herein or in any other Transaction Document, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as, and the Company acknowledges that the Purchasers do not so constitute, a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group, and the Company will not assert any such claim with respect to such obligations or the transactions contemplated by the Transaction Documents and the Company acknowledges that the Purchasers are not acting in concert or as a group with respect to such obligations or the transactions contemplated by the Transaction Documents. The Company acknowledges and each Purchaser confirms that it has independently participated in the negotiation of the transaction contemplated hereby with the advice of its own counsel and advisors. Each Purchaser shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement or out of any other Transaction Documents, and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose. The use of a single agreement to effectuate the purchase and sale of the Securities contemplated hereby was solely in the control of the Company, not the action or decision of any Purchaser, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Purchaser. It is expressly understood and agreed that each provision contained in this Agreement and in each other Transaction Document is between the Company and a Purchaser, solely, and not between the Company and the Purchasers collectively and not between and among the Purchasers. Notwithstanding the foregoing, nothing in this subsection (n) shall be construed to alter or affect the closing condition set forth in Section 6(b) hereof.

SIGNATURES ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, each Purchaser and the Company have caused their respective signature pages to this Securities Purchase Agreement to be duly executed as of the date first written above.

THE COMPANY:

SUNSHINE HEART, INC.

By: ______________________________
Name: ______________________________
Title: ______________________________

SIGNATURE PAGES FOR THE PURCHASERS FOLLOW

INITIAL CLOSING SIGNATURE PAGE

IN WITNESS WHEREOF, each Purchaser and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

NAME OF PURCHASER:

By: ______________________________
Name: ______________________________
Title: ______________________________

Aggregate Purchase Price (Subscription Amount): A$[ ]

Number of Common Shares and Warrants to be Acquired: [ ]

Tax ID No.: [ ]

Address for Notice: [ ]
[ ]

Telephone No.: [ ]

Facsimile No.: [ ]

E-mail Address: [ ]

Attention: [ ]

Delivery Instructions:

(if different than above)

c/o
Street:
City/State/Zip:
Attention:
Telephone No.:

SUBSEQUENT CLOSING SIGNATURE PAGE

IN WITNESS WHEREOF, each Purchaser and the Company have caused their respective signature page to this Securities Purchase Agreement to be duly executed as of the date first written above.

NAME OF PURCHASER:

By: ______________________________
Name: ______________________________
Title: ______________________________

Aggregate Purchase Price (Subscription Amount): A$[ ]

Number of Common Shares and Warrants to be Acquired: [ ]

Tax ID No.: [ ]

Address for Notice: [ ]
[ ]

Telephone No.: [ ]

Facsimile No.: [ ]

E-mail Address: [ ]

Attention: [ ]

Delivery Instructions:

(if different than above)

c/o
Street:
City/State/Zip:
Attention:
Telephone No.:

Exhibit 10.11

SUNSHINE HEART, INC.

FIRST AMENDMENT TO
SECURITIES PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT (this ***"Amendment"***) is made and entered into as of August 29, 2011, by and among SUNSHINE HEART, INC., a Delaware corporation (the ***"Company"***), and each of those persons and entities, severally and not jointly, whose names are set forth on the Schedule of Purchasers attached hereto as EXHIBIT A (collectively, the ***"Purchasers"*** and each, without distinction, a ***"Purchaser"***).

RECITALS

WHEREAS, the Company and the Purchasers entered into that certain Securities Purchase Agreement dated July 21, 2011 (the ***"Securities Purchase Agreement"***); and

WHEREAS, pursuant to Section 9(e) of the Securities Purchase Agreement, the Company and the Purchasers desire to amend the Securities Purchase Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. AMENDMENT TO SECTION 1(D). The first sentence of Section 1(d) of the Securities Purchase Agreement is hereby amended such that "August 31, 2011" shall be deleted in its entirety and replaced with "September 16, 2011". The Purchasers hereby ratify and confirm all previous action taken by the Company under the Securities Purchase Agreement.

2. LIMITED MODIFICATION. Except to the extent amended or modified herein, all provisions of the Securities Purchase Agreement remain in full force and effect.

3. COUNTERPARTS. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

SIGNATURES ON THE FOLLOWING PAGE

This **FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT** is hereby executed as of the date first above written.

THE COMPANY:

SUNSHINE HEART, INC.

By: /s/ Jeffrey S. Mathiesen
Name: Jeffrey S. Mathiesen
Title: Chief Financial Officer

SIGNATURE PAGE TO SUNSHINE HEART, INC.
FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT

This **FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT** is hereby executed as of the date first above written.

THE PURCHASERS:

DAFNA LIFESCIENCE MARKET NEUTRAL LTD.

By: /s/ David Fischel
Name: David Fischel
Title: Principal

SIGNATURE PAGE TO SUNSHINE HEART, INC.
FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT

This **FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT** is hereby executed as of the date first above written.

THE PURCHASERS:

DAFNA LIFESCIENCE LTD.

By: /s/ David Fischel
Name: David Fischel
Title: Principal

SIGNATURE PAGE TO SUNSHINE HEART, INC.
FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT

This **FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT** is hereby executed as of the date first above written.

THE PURCHASERS:

**NEW EMERGING MEDICAL
OPPORTUNITIES FUND LP**

By: /s/ Michael Sjostrom
Name: Michael Sjöström
Title: CIO

SIGNATURE PAGE TO SUNSHINE HEART, INC.
FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT

This **FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT** is hereby executed as of the date first above written.

THE PURCHASERS:

HARTZ CAPITAL INVESTMENTS, LLC
By: Empery Asset Management, LP, its authorized agent
By: /s/ Ryan M. Lane
Name: Ryan M. Lane
Title: Managing Member of Empery Asset Management, LP

SIGNATURE PAGE TO SUNSHINE HEART, INC.
FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT

This **FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT** is hereby executed as of the date first above written.

THE PURCHASERS:

EMPERY ASSET MASTER, LTD
By: Empery Asset Management, LP, its authorized agent
By: /s/ Ryan M. Lane
Name: Ryan M. Lane
Title: Managing Member of Empery Asset Management, LP

SIGNATURE PAGE TO SUNSHINE HEART, INC.
FIRST AMENDMENT TO SECURITIES PURCHASE AGREEMENT

NEITHER THIS SECURITY NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE ***"SECURITIES ACT"***), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

SUNSHINE HEART, INC.

WARRANT TO PURCHASE COMMON STOCK

Warrant No.CSW-*** Original Issue Date: ***** **, 2011**

SUNSHINE HEART, INC., a Delaware corporation (the ***"Company"***), hereby certifies that, for value received, ******* or its permitted registered assigns (the ***"Holder"***), is entitled to purchase from the Company up to a total of ******* shares (subject to adjustment as provided herein) of common stock, US$0.0001 par value per share (the ***"Common Stock"***), of the Company (each such share, a ***"Warrant Share"*** and all such shares, including any additional shares, if any, to be issued pursuant to the immediately following paragraph, the ***"Warrant Shares"***) at an exercise price equal to A$0.056 per share (as adjusted from time to time as provided in Section 9 herein, the ***"Exercise Price"***), at any time and from time to time on or after the date hereof (the ***"Trigger Date"***) and through and including 5:30 P.M., New York City time, on ***** **, 2015** (the ***"Expiration Date"***), and subject to the following terms and conditions:

This Warrant (this ***"Warrant"***) is one of a series of similar warrants issued pursuant to that certain Securities Purchase Agreement, dated July 21, 2011, by and among the Company and the Purchasers identified therein, as amended (the ***"Purchase Agreement"***). All such warrants are referred to herein, collectively, as the ***"Warrants."***

1. DEFINITIONS. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Purchase Agreement. All dollar amounts set forth herein shall refer to Australian currency.

2. REGISTRATION OF WARRANTS. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the ***"Warrant Register"***), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any registered assignee to which this Warrant is permissibly assigned hereunder) from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof

for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. REGISTRATION OF TRANSFERS. Subject to compliance with all applicable securities laws, the Company shall register the transfer of all or any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached as Schedule 2 hereto duly completed and signed, to the Company's transfer agent or to the Company at its address specified in the Purchase Agreement and (x) delivery, at the request of the Company, of an opinion of counsel reasonably satisfactory to the Company to the effect that the transfer of such portion of this Warrant may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws and (y) delivery by the transferee of a written statement to the Company certifying that the transferee is an "accredited investor" as defined in Rule 501(a) under the Securities Act, to the Company at its address specified in the Purchase Agreement. Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a ***"New Warrant"***) evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. Any New Warrant issued pursuant to a partial exercise of this Warrant or as a result of a transfer of this Warrant shall be deemed to have the Original Issue Date of ***** **, 2011**, which is the date that this Warrant was initially issued to such Holder or its predecessor. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations in respect of the New Warrant that the Holder has in respect of this Warrant. The Company shall prepare, issue and deliver at its own expense any New Warrant under this Section 3.

4. EXERCISE AND DURATION OF WARRANTS.

(a) All or any part of this Warrant shall be exercisable by the registered Holder in any manner permitted by Section 10 of this Warrant at any time and from time to time on or after the Trigger Date and through and including 5:30 P.M. New York City time, on the Expiration Date. At 5:30 P.M., New York City time, on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value and this Warrant shall be terminated and no longer outstanding.

(b) The Holder may exercise this Warrant by delivering to the Company (i) an exercise notice (whether via facsimile or otherwise), in the form attached as Schedule 1 hereto (the ***"Exercise Notice"***), completed and duly signed, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a "cashless exercise" if so indicated in the Exercise Notice and if a "cashless exercise" may occur at such time pursuant to Section 10 below), and the date on which the last of such items is delivered to the Company (as determined in accordance with the notice provisions hereof) is an ***"Exercise Date."*** The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. DELIVERY OF WARRANT SHARES.

(a) Upon exercise of this Warrant, the Company shall promptly (but in no event later than three Trading Days after the Exercise Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate (provided that, if a Registration Statement covering the resale of the Warrant Shares is not effective and the Holder directs the Company to deliver a certificate for the Warrant Shares in a name other than that of the Holder or an Affiliate of the Holder, it shall deliver to the Company on the Exercise Date an opinion of counsel reasonably satisfactory to the Company to the effect that the issuance of such Warrant Shares in such other name may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws), (i) a certificate for the Warrant Shares issuable upon such exercise, free of restrictive legends, or (ii) an electronic delivery of the Warrant Shares to the Holder's account at either CHESS Depositary Nominees Pty Ltd. which will hold legal title to the Warrant Shares on behalf of the Holder for its benefit through the issue of CHESS Depositary Interests that will be quoted on the stock market of the Australian Securities Exchange or the Depository Trust Company (***"DTC"***) or a similar organization, unless in the case of clause (i) and (ii) a registration statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder is not then effective or the Warrant Shares are not freely transferable without volume and manner of sale restrictions pursuant to Rule 144 under the Securities Act, in which case such Holder shall receive a certificate for the Warrant Shares issuable upon such exercise with appropriate restrictive legends. The Holder, or any Person permissibly so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date. If the Warrant Shares are to be issued free of all restrictive legends, the Company shall, upon the written request of the Holder, use its reasonable best efforts to deliver, or cause to be delivered, Warrant Shares hereunder electronically through DTC or another established clearing corporation performing similar functions, if available; provided, that, the Company may, but will not be required to, change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through such a clearing corporation. For purposes of this Warrant, ***"Trading Day"*** shall mean any day on which the Warrant Shares are traded on a U.S. stock exchange or, if inapplicable, the principal securities exchange or securities market on which the Warrant Shares are then traded.

(b) In addition to any other rights available to the Holder, if by the close of the third Trading Day after delivery of an Exercise Notice and the payment of the aggregate exercise price in any manner permitted by Section 10 of this Warrant, the Company fails to deliver to the Holder a certificate (or make an electronic delivery) representing the required number of Warrant Shares in the manner required pursuant to Section 5(a), and if after such third Trading Day and prior to the receipt of such Warrant Shares, the Holder or the Holder's brokerage firm purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a ***"Buy-In"***), then the Company shall, within three (3) Trading Days after the Holder's request and in the Holder's sole discretion, either (1) pay in cash to the Holder an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the ***"Buy-In Price"***), at which point the Company's obligation to deliver such certificate (or make an electronic delivery) (and to issue such Warrant Shares) shall terminate or (2) promptly honor its obligation to deliver to the Holder a certificate or certificates

(or make an electronic delivery) representing such Warrant Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) the number of shares of Common Stock purchased in the Buy-In, times (B) the closing bid price of a share of Common Stock on the Exercise Date.

6. CHARGES, TAXES AND EXPENSES. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; *provided*, *however*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or the Warrants in a name other than that of the Holder or an Affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. REPLACEMENT OF WARRANT. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction (in such case) and, in each case, a customary and reasonable indemnity or surety bond, if requested by the Company. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. RESERVATION OF WARRANT SHARES. The Company represents, warrants, covenants and agrees that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares that are issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price (including by "cashless exercise" if permitted hereunder) in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company, without requiring any action to be taken or expense to be incurred by Holder, will take all such action as may be reasonably necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed.

9. CERTAIN ADJUSTMENTS. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares, (iii) combines its outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each such case the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii), (iii) or (iv) of this paragraph shall become effective immediately after the effective date of such subdivision or combination or reclassification.

(b) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, distributes to all holders of Common Stock for no consideration (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph) or (iii) rights, options or warrants to subscribe for or purchase any security, or (iv) any other asset (including cash or cash dividends) (in each case, ***"Distributed Property"***), then, upon any exercise of this Warrant that occurs after the record date fixed for determination of stockholders entitled to receive such distribution, the Holder shall be entitled to receive, in addition to the Warrant Shares otherwise issuable upon such exercise (if applicable), the Distributed Property that such Holder would have been entitled to receive in respect of such number of Warrant Shares had the Holder been the record holder of such Warrant Shares immediately prior to such record date without regard to any limitation on exercise contained therein.

(c) Change in Control. For the purpose of this Warrant, "***Change in Control***" means a merger or consolidation of the Company with or into any other corporation or corporations in which the stockholders of the Company immediately prior to the merger or consolidation do not own more than fifty percent (50%) of the outstanding voting power (assuming conversion of all convertible securities and the exercise of all outstanding options) of the surviving corporation or the sale, lease, licensing, transfer or other disposition of all or substantially all the assets of the Company, unless the requisite stockholders of the Company elect, pursuant to the Certificate of Incorporation (as defined below), for such transaction or transactions not to be a Change in Control of the Company.

(i) Upon the written request of the Company, the Holder agrees that, in the event of a Change in Control that is not an asset sale and in which the sole consideration is cash, either (a) the Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Change in Control or (b) if the Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Change in Control. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as such Holder may request in connection with such contemplated Change in Control giving rise

to such notice), which is to be delivered to the Holder not less than ten (10) days prior to the closing of the proposed Change in Control.

(ii) Upon the written request of the Company, the Holder agrees that, in the event of a Change in Control that is an "arms length" sale of all or substantially all of the Company's assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a "***True Asset Sale***"), either (a) the Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Change in Control or (b) if the Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as such Holder may request in connection with such contemplated Change in Control giving rise to such notice), which is to be delivered to the Holder not less than ten (10) days prior to the closing of the proposed Change in Control. As used herein "***Affiliate***" shall mean any person or entity that owns or controls directly or indirectly ten (10) percent or more of the stock of the Company, and any person or entity that controls or is controlled by or is under common control with such persons or entities.

(iii) Upon the written request of the Company, the Holder agrees that, in the event of a stock for stock Change in Control of the Company by a publicly traded acquirer if, on the record date for the Change in Control, the fair market value of the Warrant Shares (or other securities issuable upon exercise of this Warrant) is equal to or greater than two (2) times the Exercise Price, the Company may require the Warrant to be deemed automatically exercised and the Holder shall participate in the Change in Control as a holder of the Warrant Shares (or other securities issuable upon exercise of the Warrant) on the same terms as other holders of the same class of securities of the Company.

(iv) Upon the closing of any Change in Control other than those particularly described in subsections (i), (ii) and (iii) above, the successor entity, if any, and if applicable, shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Warrant Shares issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Shares were outstanding on the record date for the Change in Control and subsequent closing. The Exercise Price and/or number of Warrant Shares shall be adjusted accordingly.

(d) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section 9, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) Calculations. All calculations under this Section 9 shall be rounded to the nearest cent or up to the next share, as applicable.

(f) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly notify the Holders of the applicable adjustment, compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(g) Notice of Corporate Events. If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including, without limitation, any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Change in Control or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then, except if such notice and the contents thereof shall be deemed to constitute material non-public information, the Company shall deliver to the Holder a notice of such transaction at least ten (10) business days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction and the Company will take all reasonable steps to give Holder the practical opportunity to exercise this Warrant prior to such time; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

(h) **Special ASX Provision.** For so long as shares of the Company's capital stock (or CHESS Depositary Interests representing such shares) are listed or otherwise quoted on the stock market of the Australian Securities Exchange (the ***"ASX"***), the following provisions of this Section 9(h) shall apply.

(i) The Company will, in accordance with the listing rules of the ASX (the ***"ASX Listing Rules"***), make an application to have the Warrant Shares that are issued pursuant to an exercise of this Warrant, listed for official quotation on the market conducted by ASX. In the case of any pro-rata issue (other than a bonus issue), the Exercise Price will be reduced according to the formula set out for making such an adjustment in the ASX Listing Rules. In the case of a bonus issue, the number of Warrant Shares over which this Warrant is exercisable will, in accordance with the ASX Listing Rules, be increased by the number of Warrant Shares which the Holder would have received if this Warrant had been exercised before the record date for the bonus issue. The Company will notify the ASX of the adjustments in accordance with the ASX Listing Rules.

(ii) In the event of any reorganisation (including consolidation, subdivisions, reduction or return) of the authorised or issued capital of the Company, the rights of the Holder will be changed to the extent necessary to comply with the ASX Listing Rules applying to a reorganisation of capital at the time of the reorganisation.

(iii) Upon reorganisation of the Company's capital, the rights of the Holder will, as required, be changed to comply with the ASX Listing Rules.

Other than as permitted under the ASX Listing Rules, the Warrant does not give the Holder any right to vote, receive dividends, participate in new share issues or grant any other rights to the Holder as a shareholder until Warrant Shares are allotted pursuant to the exercise of the Warrant. In the event the terms and conditions of this Section 9(h) conflict with the terms and conditions set forth in Sections 9(a)-(d) of this Warrant, the terms and conditions of this Section 9(h) shall control.

10. **PAYMENT OF EXERCISE PRICE.** The Holder shall pay the Exercise Price in immediately available funds; provided, however, that if, on any Exercise Date there is not an effective registration statement registering, or no current prospectus available for, the resale of the Warrant Shares by the Holder or if on any Exercise Date, the Warrant Shares (or CHESS Depository Interests representing the Warrant Shares) are not listed or quoted on the ASX, then the Holder may, in its sole discretion, satisfy its obligation to pay the Exercise Price through a "cashless exercise", in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the Closing Sale Prices of the shares of Common Stock (as reported by Bloomberg Financial Markets) for the five (5) consecutive Trading Days ending on the date immediately preceding the Exercise Date.

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of this Warrant, ***"Closing Sale Price"*** means, for any security as of any date, the last trade price for such security on the principal securities exchange or trading market for such security, as reported by Bloomberg Financial Markets, or, if such exchange or trading market begins to operate on an extended hours basis and does not designate the last trade price, then the last trade price of such security prior to 4:00 P.M., New York City time, as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no last trade price is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing

bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then the Board of Directors of the Company shall use its good faith judgment to determine the fair market value. The Board of Directors' determination shall be binding upon all parties absent demonstrable error. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

Notwithstanding anything herein to the contrary, on the Expiration Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 10.

11. **LIMITATIONS ON EXERCISE**.

(a) Notwithstanding anything to the contrary contained in this Warrant (other than the provisions of Section 11(b) below), the Company shall not effect any exercise of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant to the extent (but only to the extent) that, after giving effect to such issuance after exercise, the Holder (together with any person acting as a group with the Holder or the Holder's Affiliates) would beneficially own in excess of 9.99% (the ***"Maximum Percentage"***) of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder) and of which warrants shall be exercisable (as among all warrants owned by the Holder) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership and as to the determination of any group) shall be determined by the Holder in accordance with Section 13(d) of the Securities Exchange Act of 1934 (the ***"Exchange Act"***) and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. Each delivery of an Exercise Notice by the Holder will constitute a representation by the Holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of Warrant Shares requested by the Holder in such Exercise Notice is permitted under this paragraph.

(b) The provisions of Section 11(a) above shall not apply to any exercise by any Holder whose beneficial ownership of Common Stock immediately prior to the issuance of

this Warrant (together with any person acting as a group with such Holder and such Holder's Affiliates) exceeds the Maximum Percentage (an ***"Existing MP Holder"***), provided, however, if at any time after the date hereof an Existing MP Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with such Holders for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) shall collectively beneficially own the Maximum Percentage or less, then such Holder may deliver a written notice to the Company (an ***"MP Notice"***) providing that such Holder irrevocably elects to be subject to the provisions of Section 11(a).

(c) Notwithstanding anything to the contrary contained in this Warrant, the Company shall not effect any exercise of this Warrant (including if held by an Existing MP Holder that has not delivered an MP Notice), and the Holder shall not have the right to exercise any portion of this Warrant to the extent (but only to the extent) that, after giving effect to such issuance after exercise, the Holder (together with any person acting as a group with the Holder or the Holder's Affiliates) would beneficially own in excess of 19.99% (the ***"Applicable Percentage***") of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder) and of which warrants shall be exercisable (as among all warrants owned by the Holder) shall, subject to such Applicable Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership and as to the determination of any group) shall be determined by the Holder in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Applicable Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Applicable Percentage limitation. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. Each delivery of an Exercise Notice by a Holder will constitute a representation by such Holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of Warrant Shares requested by the Holder in such Exercise Notice is permitted under this paragraph.

12. NO FRACTIONAL SHARES. No fractional Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares that would, otherwise be issuable, the number of Warrant Shares to be issued shall be rounded down to the

next whole number and the Company shall pay the Holder in cash the fair market value (based on the Closing Sale Price) for any such fractional shares.

13. NOTICES. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement prior to 5:30 P.M., New York City time, on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement on a day that is not a Trading Day or later than 5:30 P.M., New York City time, on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next business day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the Purchase Agreement unless changed by such party by two (2) Trading Days' prior notice to the other party in accordance with this Section 13.

14. WARRANT AGENT. The Company shall serve as warrant agent under this Warrant. Upon thirty (30) days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. MISCELLANEOUS.

(a) No Rights as a Stockholder. Unless otherwise permitted in this Warrant, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, amalgamation, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

(b) Authorized Shares.

(i) The Company covenants that during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number

of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the trading market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

(ii) Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant, and (c) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant.

(iii) Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(c) Successors and Assigns. Subject to compliance with applicable securities laws, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company without the written consent of the Holder except to a successor in the event of a Change in Control. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or their successors and assigns.

(d) Amendment and Waiver. Except as otherwise provided herein, the provisions of the Warrant may be amended and the Company may take any action herein

prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder.

(e) Acceptance. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

(f) Governing Law; Jurisdiction. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT.

(g) Headings. The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(h) Severability. In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby, and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(i) Remedies. The Company stipulates that the remedies at law of the Holder of this Warrant in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate and that, to the fullest extent permitted by law, such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

SUNSHINE HEART, INC.

By: ______________________________
Name: ______________________________
Title: ______________________________

SCHEDULE 1

To: SUNSHINE HEART, INC.

1. The undersigned hereby elects to purchase Shares of SUNSHINE HEART, INC. pursuant to the terms of the attached Warrant, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

2. Payment shall take the form of (check applicable box):

o in lawful money of the United States; or

o the cancellation of such number of Shares as is necessary, in accordance with the formula set forth in Section 10 of the Warrant, to exercise this Warrant with respect to the maximum number of Shares purchasable pursuant to the cashless exercise procedure set forth in Section 10 of the Warrant.

3. Please issue a certificate or certificates representing such Shares in the name of the undersigned or in such other name as is specified below:

____

The Shares shall be delivered to the following:

____

____

____

4. The undersigned is (i) an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended (the ***“Securities Act”***), and/or (ii) a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act.

[NAME OF PURCHASER]

By: ______________________________
Name: ______________________________
Title: ______________________________

Dated: ______________________________

NEITHER THIS SECURITY NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE ***"SECURITIES ACT"***), OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OR (B) AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT OR (II) UNLESS SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

SUNSHINE HEART, INC.

WARRANT TO PURCHASE COMMON STOCK

Warrant No.CSW-** Original Issue Date: ***** **, 2011**

SUNSHINE HEART, INC., a Delaware corporation (the ***"Company"***), hereby certifies that, for value received, ******* or its permitted registered assigns (the ***"Holder"***), is entitled to purchase from the Company up to a total of ******* shares (subject to adjustment as provided herein) of common stock, US$0.0001 par value per share (the ***"Common Stock"***), of the Company (each such share, a ***"Warrant Share"*** and all such shares, including any additional shares, if any, to be issued pursuant to the immediately following paragraph, the ***"Warrant Shares"***) at an exercise price equal to A$0.04 per share (as adjusted from time to time as provided in Section 9 herein, the ***"Exercise Price"***), at any time and from time to time on or after the date hereof (the ***"Trigger Date"***) and through and including 5:30 P.M., New York City time, on ***** **, 2016** (the ***"Expiration Date"***), and subject to the following terms and conditions:

This Warrant (this ***"Warrant"***) is one of a series of similar warrants issued pursuant to that certain Securities Purchase Agreement, dated July 21, 2011, by and among the Company and the Purchasers identified therein (the ***"Purchase Agreement"***). All such warrants are referred to herein, collectively, as the ***"Warrants."***

1. DEFINITIONS. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Purchase Agreement. All dollar amounts set forth herein shall refer to Australian currency.

2. REGISTRATION OF WARRANTS. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the ***"Warrant Register"***), in the name of the record Holder (which shall include the initial Holder or, as the case may be, any registered assignee to which this Warrant is permissibly assigned hereunder) from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof

for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. REGISTRATION OF TRANSFERS. Subject to compliance with all applicable securities laws, the Company shall register the transfer of all or any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached as Schedule 2 hereto duly completed and signed, to the Company's transfer agent or to the Company at its address specified in the Purchase Agreement and (x) delivery, at the request of the Company, of an opinion of counsel reasonably satisfactory to the Company to the effect that the transfer of such portion of this Warrant may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws and (y) delivery by the transferee of a written statement to the Company certifying that the transferee is an "accredited investor" as defined in Rule 501(a) under the Securities Act, to the Company at its address specified in the Purchase Agreement. Upon any such registration or transfer, a new warrant to purchase Common Stock in substantially the form of this Warrant (any such new warrant, a ***"New Warrant"***) evidencing the portion of this Warrant so transferred shall be issued to the transferee, and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. Any New Warrant issued pursuant to a partial exercise of this Warrant or as a result of a transfer of this Warrant shall be deemed to have the Original Issue Date of ***** **, 2011**, which is the date that this Warrant was initially issued to such Holder or its predecessor. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations in respect of the New Warrant that the Holder has in respect of this Warrant. The Company shall prepare, issue and deliver at its own expense any New Warrant under this Section 3.

4. EXERCISE AND DURATION OF WARRANTS.

(a) All or any part of this Warrant shall be exercisable by the registered Holder in any manner permitted by Section 10 of this Warrant at any time and from time to time on or after the Trigger Date and through and including 5:30 P.M. New York City time, on the Expiration Date. At 5:30 P.M., New York City time, on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value and this Warrant shall be terminated and no longer outstanding.

(b) The Holder may exercise this Warrant by delivering to the Company (i) an exercise notice (whether via facsimile or otherwise), in the form attached as Schedule 1 hereto (the ***"Exercise Notice"***), completed and duly signed, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a "cashless exercise" if so indicated in the Exercise Notice and if a "cashless exercise" may occur at such time pursuant to Section 10 below), and the date on which the last of such items is delivered to the Company (as determined in accordance with the notice provisions hereof) is an ***"Exercise Date."*** The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. DELIVERY OF WARRANT SHARES.

(a) Upon exercise of this Warrant, the Company shall promptly (but in no event later than three Trading Days after the Exercise Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate (provided that, if a Registration Statement covering the resale of the Warrant Shares is not effective and the Holder directs the Company to deliver a certificate for the Warrant Shares in a name other than that of the Holder or an Affiliate of the Holder, it shall deliver to the Company on the Exercise Date an opinion of counsel reasonably satisfactory to the Company to the effect that the issuance of such Warrant Shares in such other name may be made pursuant to an available exemption from the registration requirements of the Securities Act and all applicable state securities or blue sky laws), (i) a certificate for the Warrant Shares issuable upon such exercise, free of restrictive legends, or (ii) an electronic delivery of the Warrant Shares to the Holder's account at either CHESS Depositary Nominees Pty Ltd. which will hold legal title to the Warrant Shares on behalf of the Holder for its benefit through the issue of CHESS Depositary Interests that will be quoted on the stock market of the Australian Securities Exchange or the Depository Trust Company (***"DTC"***) or a similar organization, unless in the case of clause (i) and (ii) a registration statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder is not then effective or the Warrant Shares are not freely transferable without volume and manner of sale restrictions pursuant to Rule 144 under the Securities Act, in which case such Holder shall receive a certificate for the Warrant Shares issuable upon such exercise with appropriate restrictive legends. The Holder, or any Person permissibly so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date. If the Warrant Shares are to be issued free of all restrictive legends, the Company shall, upon the written request of the Holder, use its reasonable best efforts to deliver, or cause to be delivered, Warrant Shares hereunder electronically through DTC or another established clearing corporation performing similar functions, if available; provided, that, the Company may, but will not be required to, change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through such a clearing corporation. For purposes of this Warrant, ***"Trading Day"*** shall mean any day on which the Warrant Shares are traded on a U.S. stock exchange or, if inapplicable, the principal securities exchange or securities market on which the Warrant Shares are then traded.

(b) In addition to any other rights available to the Holder, if by the close of the third Trading Day after delivery of an Exercise Notice and the payment of the aggregate exercise price in any manner permitted by Section 10 of this Warrant, the Company fails to deliver to the Holder a certificate (or make an electronic delivery) representing the required number of Warrant Shares in the manner required pursuant to Section 5(a), and if after such third Trading Day and prior to the receipt of such Warrant Shares, the Holder or the Holder's brokerage firm purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a ***"Buy-In"***), then the Company shall, within three (3) Trading Days after the Holder's request and in the Holder's sole discretion, either (1) pay in cash to the Holder an amount equal to the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased (the ***"Buy-In Price"***), at which point the Company's obligation to deliver such certificate (or make an electronic delivery) (and to issue such Warrant Shares) shall terminate or (2) promptly honor its obligation to deliver to the Holder a certificate or certificates

(or make an electronic delivery) representing such Warrant Shares and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) the number of shares of Common Stock purchased in the Buy-In, times (B) the closing bid price of a share of Common Stock on the Exercise Date.

6. CHARGES, TAXES AND EXPENSES. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; *provided*, *however*, that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or the Warrants in a name other than that of the Holder or an Affiliate thereof. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. REPLACEMENT OF WARRANT. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction (in such case) and, in each case, a customary and reasonable indemnity or surety bond, if requested by the Company. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. RESERVATION OF WARRANT SHARES. The Company represents, warrants, covenants and agrees that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares that are issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price (including by "cashless exercise" if permitted hereunder) in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company, without requiring any action to be taken or expense to be incurred by Holder, will take all such action as may be reasonably necessary to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed.

9. CERTAIN ADJUSTMENTS. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) **Stock Dividends and Splits.** If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides its outstanding shares of Common Stock into a larger number of shares, (iii) combines its outstanding shares of Common Stock into a smaller number of shares or (iv) issues by reclassification of shares of Common Stock any shares of capital stock of the Company, then in each such case the Exercise Price shall be multiplied by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such event and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii), (iii) or (iv) of this paragraph shall become effective immediately after the effective date of such subdivision or combination or reclassification.

(b) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, distributes to all holders of Common Stock for no consideration (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph) or (iii) rights, options or warrants to subscribe for or purchase any security, or (iv) any other asset (including cash or cash dividends) (in each case, ***"Distributed Property"***), then, upon any exercise of this Warrant that occurs after the record date fixed for determination of stockholders entitled to receive such distribution, the Holder shall be entitled to receive, in addition to the Warrant Shares otherwise issuable upon such exercise (if applicable), the Distributed Property that such Holder would have been entitled to receive in respect of such number of Warrant Shares had the Holder been the record holder of such Warrant Shares immediately prior to such record date without regard to any limitation on exercise contained therein.

(c) Change in Control. For the purpose of this Warrant, "***Change in Control***" means a merger or consolidation of the Company with or into any other corporation or corporations in which the stockholders of the Company immediately prior to the merger or consolidation do not own more than fifty percent (50%) of the outstanding voting power (assuming conversion of all convertible securities and the exercise of all outstanding options) of the surviving corporation or the sale, lease, licensing, transfer or other disposition of all or substantially all the assets of the Company, unless the requisite stockholders of the Company elect, pursuant to the Certificate of Incorporation (as defined below), for such transaction or transactions not to be a Change in Control of the Company.

(i) Upon the written request of the Company, the Holder agrees that, in the event of a Change in Control that is not an asset sale and in which the sole consideration is cash, either (a) the Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Change in Control or (b) if the Holder elects not to exercise the Warrant, this Warrant will expire upon the consummation of such Change in Control. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as such Holder may request in connection with such contemplated Change in Control giving rise

to such notice), which is to be delivered to the Holder not less than ten (10) days prior to the closing of the proposed Change in Control.

(ii) Upon the written request of the Company, the Holder agrees that, in the event of a Change in Control that is an "arms length" sale of all or substantially all of the Company's assets (and only its assets) to a third party that is not an Affiliate (as defined below) of the Company (a "***True Asset Sale***"), either (a) the Holder shall exercise its conversion or purchase right under this Warrant and such exercise will be deemed effective immediately prior to the consummation of such Change in Control or (b) if the Holder elects not to exercise the Warrant, this Warrant will continue until the Expiration Date if the Company continues as a going concern following the closing of any such True Asset Sale. The Company shall provide the Holder with written notice of its request relating to the foregoing (together with such reasonable information as such Holder may request in connection with such contemplated Change in Control giving rise to such notice), which is to be delivered to the Holder not less than ten (10) days prior to the closing of the proposed Change in Control. As used herein "***Affiliate***" shall mean any person or entity that owns or controls directly or indirectly ten (10) percent or more of the stock of the Company, and any person or entity that controls or is controlled by or is under common control with such persons or entities.

(iii) Upon the written request of the Company, the Holder agrees that, in the event of a stock for stock Change in Control of the Company by a publicly traded acquirer if, on the record date for the Change in Control, the fair market value of the Warrant Shares (or other securities issuable upon exercise of this Warrant) is equal to or greater than two (2) times the Exercise Price, the Company may require the Warrant to be deemed automatically exercised and the Holder shall participate in the Change in Control as a holder of the Warrant Shares (or other securities issuable upon exercise of the Warrant) on the same terms as other holders of the same class of securities of the Company.

(iv) Upon the closing of any Change in Control other than those particularly described in subsections (i), (ii) and (iii) above, the successor entity, if any, and if applicable, shall assume the obligations of this Warrant, and this Warrant shall be exercisable for the same securities, cash, and property as would be payable for the Warrant Shares issuable upon exercise of the unexercised portion of this Warrant as if such Warrant Shares were outstanding on the record date for the Change in Control and subsequent closing. The Exercise Price and/or number of Warrant Shares shall be adjusted accordingly.

(d) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section 9, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the increased or decreased number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) Calculations. All calculations under this Section 9 shall be rounded to the nearest cent or up to the next share, as applicable.

(f) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly notify the Holders of the applicable adjustment, compute such adjustment, in good faith, in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(g) Notice of Corporate Events. If, while this Warrant is outstanding, the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including, without limitation, any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Change in Control or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then, except if such notice and the contents thereof shall be deemed to constitute material non-public information, the Company shall deliver to the Holder a notice of such transaction at least ten (10) business days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction and the Company will take all reasonable steps to give Holder the practical opportunity to exercise this Warrant prior to such time; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

(h) **Special ASX Provision.** For so long as shares of the Company's capital stock (or CHESS Depositary Interests representing such shares) are listed or otherwise quoted on the stock market of the Australian Securities Exchange (the ***"ASX"***), the following provisions of this Section 9(h) shall apply.

(i) The Company will, in accordance with the listing rules of the ASX (the ***"ASX Listing Rules"***), make an application to have the Warrant Shares that are issued pursuant to an exercise of this Warrant, listed for official quotation on the market conducted by ASX. In the case of any pro-rata issue (other than a bonus issue), the Exercise Price will be reduced according to the formula set out for making such an adjustment in the ASX Listing Rules. In the case of a bonus issue, the number of Warrant Shares over which this Warrant is exercisable will, in accordance with the ASX Listing Rules, be increased by the number of Warrant Shares which the Holder would have received if this Warrant had been exercised before the record date for the bonus issue. The Company will notify the ASX of the adjustments in accordance with the ASX Listing Rules.

(ii) In the event of any reorganisation (including consolidation, subdivisions, reduction or return) of the authorised or issued capital of the Company, the rights of the Holder will be changed to the extent necessary to comply with the ASX Listing Rules applying to a reorganisation of capital at the time of the reorganisation.

(iii) Upon reorganisation of the Company's capital, the rights of the Holder will, as required, be changed to comply with the ASX Listing Rules.

Other than as permitted under the ASX Listing Rules, the Warrant does not give the Holder any right to vote, receive dividends, participate in new share issues or grant any other rights to the Holder as a shareholder until Warrant Shares are allotted pursuant to the exercise of the Warrant. In the event the terms and conditions of this Section 9(h) conflict with the terms and conditions set forth in Sections 9(a)-(d) of this Warrant, the terms and conditions of this Section 9(h) shall control.

10. **PAYMENT OF EXERCISE PRICE.** The Holder shall pay the Exercise Price in immediately available funds; provided, however, that if, on any Exercise Date there is not an effective registration statement registering, or no current prospectus available for, the resale of the Warrant Shares by the Holder or if on any Exercise Date, the Warrant Shares (or CHESS Depository Interests representing the Warrant Shares) are not listed or quoted on the ASX, then the Holder may, in its sole discretion, satisfy its obligation to pay the Exercise Price through a "cashless exercise", in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y\,[(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the total number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the Closing Sale Prices of the shares of Common Stock (as reported by Bloomberg Financial Markets) for the five (5) consecutive Trading Days ending on the date immediately preceding the Exercise Date.

B = the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

For purposes of this Warrant, ***"Closing Sale Price"*** means, for any security as of any date, the last trade price for such security on the principal securities exchange or trading market for such security, as reported by Bloomberg Financial Markets, or, if such exchange or trading market begins to operate on an extended hours basis and does not designate the last trade price, then the last trade price of such security prior to 4:00 P.M., New York City time, as reported by Bloomberg Financial Markets, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg Financial Markets, or, if no last trade price is reported for such security by Bloomberg Financial Markets, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the "pink sheets" by Pink Sheets LLC. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing

bases, the Closing Sale Price of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then the Board of Directors of the Company shall use its good faith judgment to determine the fair market value. The Board of Directors' determination shall be binding upon all parties absent demonstrable error. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during the applicable calculation period.

Notwithstanding anything herein to the contrary, on the Expiration Date, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 10.

11. **LIMITATIONS ON EXERCISE**.

(a) Notwithstanding anything to the contrary contained in this Warrant (other than the provisions of Section 11(b) below), the Company shall not effect any exercise of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant to the extent (but only to the extent) that, after giving effect to such issuance after exercise, the Holder (together with any person acting as a group with the Holder or the Holder's Affiliates) would beneficially own in excess of 9.99% (the ***"Maximum Percentage"***) of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder) and of which warrants shall be exercisable (as among all warrants owned by the Holder) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership and as to the determination of any group) shall be determined by the Holder in accordance with Section 13(d) of the Securities Exchange Act of 1934 (the ***"Exchange Act"***) and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. Each delivery of an Exercise Notice by the Holder will constitute a representation by the Holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of Warrant Shares requested by the Holder in such Exercise Notice is permitted under this paragraph.

(b) The provisions of Section 11(a) above shall not apply to any exercise by any Holder whose beneficial ownership of Common Stock immediately prior to the issuance of

this Warrant (together with any person acting as a group with such Holder and such Holder's Affiliates) exceeds the Maximum Percentage (an ***"Existing MP Holder"***), provided, however, if at any time after the date hereof an Existing MP Holder and its Affiliates and any other persons or entities whose beneficial ownership of Common Stock would be aggregated with such Holders for purposes of Section 13(d) of the Exchange Act (including shares held by any "group" of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to convert, exercise or purchase similar to the limitation set forth herein) shall collectively beneficially own the Maximum Percentage or less, then such Holder may deliver a written notice to the Company (an ***"MP Notice"***) providing that such Holder irrevocably elects to be subject to the provisions of Section 11(a).

(c) Notwithstanding anything to the contrary contained in this Warrant, the Company shall not effect any exercise of this Warrant (including if held by an Existing MP Holder that has not delivered an MP Notice), and the Holder shall not have the right to exercise any portion of this Warrant to the extent (but only to the extent) that, after giving effect to such issuance after exercise, the Holder (together with any person acting as a group with the Holder or the Holder's Affiliates) would beneficially own in excess of 19.99% (the ***"Applicable Percentage"***) of the outstanding shares of Common Stock. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder) and of which warrants shall be exercisable (as among all warrants owned by the Holder) shall, subject to such Applicable Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership and as to the determination of any group) shall be determined by the Holder in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Applicable Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Applicable Percentage limitation. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. Each delivery of an Exercise Notice by a Holder will constitute a representation by such Holder that it has evaluated the limitation set forth in this paragraph and determined that issuance of the full number of Warrant Shares requested by the Holder in such Exercise Notice is permitted under this paragraph.

12. NO FRACTIONAL SHARES. No fractional Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares that would, otherwise be issuable, the number of Warrant Shares to be issued shall be rounded down to the

next whole number and the Company shall pay the Holder in cash the fair market value (based on the Closing Sale Price) for any such fractional shares.

13. NOTICES. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement prior to 5:30 P.M., New York City time, on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in the Purchase Agreement on a day that is not a Trading Day or later than 5:30 P.M., New York City time, on any Trading Day, (iii) the Trading Day following the date of mailing, if sent by nationally recognized overnight courier service specifying next business day delivery, or (iv) upon actual receipt by the party to whom such notice is required to be given, if by hand delivery. The address and facsimile number of a party for such notices or communications shall be as set forth in the Purchase Agreement unless changed by such party by two (2) Trading Days' prior notice to the other party in accordance with this Section 13.

14. WARRANT AGENT. The Company shall serve as warrant agent under this Warrant. Upon thirty (30) days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. MISCELLANEOUS.

(a) No Rights as a Stockholder. Unless otherwise permitted in this Warrant, the Holder, solely in such Person's capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in such Person's capacity as the Holder of this Warrant, any of the rights of a stockholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, amalgamation, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which such Person is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

(b) Authorized Shares.

(i) The Company covenants that during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number

of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the trading market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

(ii) Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (a) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (b) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant, and (c) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Warrant.

(iii) Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(c) Successors and Assigns. Subject to compliance with applicable securities laws, this Warrant may be assigned by the Holder. This Warrant may not be assigned by the Company without the written consent of the Holder except to a successor in the event of a Change in Control. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder, or their successors and assigns.

(d) Amendment and Waiver. Except as otherwise provided herein, the provisions of the Warrant may be amended and the Company may take any action herein

prohibited, or omit to perform any act herein required to be performed by it, only if the Company has obtained the written consent of the Holder.

(e) Acceptance. Receipt of this Warrant by the Holder shall constitute acceptance of and agreement to all of the terms and conditions contained herein.

(f) Governing Law; Jurisdiction. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT.

(g) Headings. The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(h) Severability. In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby, and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

(i) Remedies. The Company stipulates that the remedies at law of the Holder of this Warrant in the event of any default or threatened default by the Company in the performance of or compliance with any of the terms of this Warrant are not and will not be adequate and that, to the fullest extent permitted by law, such terms may be specifically enforced by a decree for the specific performance of any agreement contained herein or by an injunction against a violation of any of the terms hereof or otherwise.

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

SUNSHINE HEART, INC.

By: ________________________
Name: ________________________
Title: ________________________

SIGNATURE PAGE TO WARRANT TO PURCHASE COMMON STOCK

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT, including any Schedules hereto (the “Agreement”) is made and entered as of this first day of November, 2009, by and between Sunshine Heart, Inc., a **Delaware** corporation (together with its subsidiary, the “Company”), and Mr. David A. Rosa (the “Executive”).

WHEREAS, the Company desires to retain the exclusive services of Executive and Executive desires to be employed by the Company;

NOW, THEREFORE, in consideration of the promises and of the mutual covenants contained herein, the parties hereto agree as follows:

1 DUTIES

1.1 The Executive shall be employed as the Chief Executive Officer (the “CEO”) of the Company. In such capacity, the Executive shall report to the Board of the Company and be subject to the supervision of the Chairman of the Board. The Company shall employ the Executive on a full-time basis and the Executive shall devote his full time diligent professional efforts to the performance of his duties as CEO of the Company (which shall be as of November 1st. During the Executive’s employment with the Company he shall devote his commercially reasonable efforts and his full business time, skill and attention to the performance of his duties on behalf of the Company. The Executive shall be permitted to (i) continue to engage in the charitable and civic activities with which he is currently involved (ii) continue to serve as a non-executive director on the boards of directors of Osprey Medical, Inc., MilkSmart, Inc. and QXMedical, LLC, and (iii) engage in other charitable or civic activities, provided that such activities described in (i) through (iii) above do not unreasonably interfere with the performance of his duties on behalf of the Company as determined in the reasonable discretion of the Board of Directors.

The Executive shall perform the duties, services and responsibilities as are consistent with the positions held by the Executive from time to time, including, but not limited to:

- the general management and supervision of the business and personnel of the Company and its subsidiaries;
- enhancing revenue levels, operational efficiencies and bottom-line results in the Company;
- providing necessary leadership to all staff for the Company, including ensuring staff retention and appropriate succession;
- reviewing, setting and implementing the strategic and operating plans and budgets for the company. For the next twelve months, these will include but not necessarily be limited to:
    - completion of the present Phase I U.S. IDE trial;
    - reviewing the data collection from the trial to ensure the proper endpoints are being met and to determine if these endpoints remain appropriate for the future U.S. Pivotal Trial and in marketing the technology;
    - reviewing, setting and implementing the plan and budget for preparing for and submitting the application for FDA approval of a Pivotal Trial and for the implementation of that trial once approved;
    - reviewing, setting and implementing the plan and budget for the application for CE-Mark approval and preparing an outline of the broad parameters of a plan for marketing the C-Pulse outside of the USA;
    - working with the Company’s Board of Directors to develop plans for raising capital to fund the Company’s activities from 2010 onwards and preparing and implementing action plans to achieve the agreed objectives;
- working with the Company’s Board of Directors to develop and pursue potential strategic options for the Company in the short and medium term (including potential linkages with major health care players); and
- all such other duties, as from time to time, are required by the Board of Directors.

1.2 The Executive’s duties, services and responsibilities will be performed under the overall supervision of, and will be consistent with the policies of, the Board of Directors to whom the Executive reports.

1.3 As of November 1st, 2009, the Executive has been appointed to the Company’s Board of Directors. Subject to the requirements of the rules of the Australian Stock Exchange relating to the election of directors, the Board of Directors of the Company shall take all reasonable steps so that the Executive will continue to serve on the Company’s Board of Directors during the term of this Agreement. Upon the termination of the Executive’s employment with the Company for any reason, unless agreed to by the Company’s Board of Directors and the Executive, the Executive will also immediately cease to be and must resign as a Director and hereby appoints severally each Member of the Board of Directors from time to time as his attorney to execute any documents required to give effect to such resignation in the event the Executive does not himself submit his resignation within two working days after being requested to do so by the Board following the termination.

1.4 During employment, the Executive shall initially be based at his home in Minneapolis, MN or such other place as directed by the Board of Directors from time to time. It is agreed that any place of business would be in Minneapolis, MN unless otherwise agreed by the Executive. The Executive will be leading the Company in working to expand its business both within the USA and internationally. The Company may require that the Executive travel interstate or overseas provided that the Company may only require the Executive to travel to Australia more than 4 times per calendar year (excluding any travel voluntarily undertaken by the Executive) if the Board considers it is reasonably commercially necessary for the Executive to do so.

2 TERM

This Agreement and the employment of the Executive under the terms of this Agreement shall commence on 1 November 2009 and will continue until terminated as provided herein.

3 COMPENSATION

3.1 In consideration of the performance by the Executive of his obligations during the employment (including any services as an officer, director, employee, member of any committee of the Company or any of its subsidiaries, or otherwise), the Company will, during the employment, pay the Executive a salary (the "Salary") at an annual rate of US$250,000. The Salary shall be paid in 12 equal monthly instalments, on the 15th day of each month, being half in advance and half in arrears. The quantum of the Salary will be reviewed each year in January, the first such review being in 2011.

3.2 On signing this Agreement, the Company may, at the sole discretion of the Board of Directors, pay the Executive a one-off sign-on bonus.

3.3 The Executive will be granted options to purchase shares of the Company's common stock pursuant to the terms and conditions set forth in the Notice of Grant of Stock Options and Stock Option Agreement attached to this Agreement as Annexure A, including that any such grant of options is subject to, and conditional upon, shareholder approval. The Executive may, from time to time, be granted further options in accordance with the Company's options scheme, as amended from time to time, including in connection with achieving milestones such as a successful capital raising by the Company of around US$30 million in the third quarter of 2010, the Company obtaining a HUD designation in the USA in 2010 for the C-Pulse and a trade sale. Any such grant will be subject to receipt of any necessary shareholder or other approvals.

3.4 During the term of this Agreement, the Executive shall be eligible to participate in the Company's short-term incentive scheme and may receive compensation at the end of each fiscal year of the Company in an amount determined by the Board of Directors. Any such short-term incentive payable to the Executive for a fiscal year during his employment shall be based on performance targets, achievement of milestones, or as otherwise agreed by the Board of Directors and the Executive from time to time, to provide for bonus compensation of up to 25% of the Salary for the relevant fiscal year. The amount of short-term incentive in any year, if any, shall be determined by the Board of Directors. Any short-term incentive that is payable based solely on the basis of continuing employment during a fiscal year, will be pro-rated for the fiscal year in which the Executive commences employment as its CEO.

3.5 The Salary shall be payable in accordance with the normal payroll practices of the Company then in effect. The Salary, and all bonuses or other forms of compensation paid to the Executive hereunder, shall be subject to all applicable taxes required to be withheld by the Company pursuant to federal, state or local law. The Executive shall be solely

responsible for income taxes imposed on the Executive by reasons of any cash or non-cash compensation and benefits provided hereunder, unless otherwise so indicated.

3.6 The Executive shall be entitled to all rights and benefits for which he is eligible under the terms and conditions of the standard Company benefits and compensation practices which may be in effect from time to time and provided by the Company to its employees generally. The standard Company benefit plan will include, at a minimum, medical, dental and vision insurance. The Company will work with the Executive to promptly develop and adopt a benefit plan for the Company's U.S. employees after the execution of this Agreement. Until the Company's adoption of such plan, the Executive will be entitled to receive a health insurance coverage supplement to reimburse any out of pocket costs for health coverage for the Executive or any persons who would be covered under the Company plan (once implemented) because of that person's relationship with the Executive.

3.7 The Executive will be entitled to business class airline travel on all international flights either paid for or reimbursed by the Company when upgrades through other means are unavailable.

3.8 The Executive shall receive, against presentation of proper receipts and vouchers, reimbursement for direct and reasonable out-of-pocket expenses incurred by him in connection with the performance of his duties, according to the policies of the Company.

3.9 The Executive shall be eligible for three weeks' vacation (in addition to public holidays) during each full calendar year during which the Executive serves hereunder (pro-rata for any part calendar year of service). Vacation not taken during any calendar year will not be carried forward into subsequent calendar years.

3.10 The Executive shall be eligible for five days' leave for sickness or personal reasons agreed with the board during each full calendar year during which the Executive serves hereunder (pro-rata for any part calendar year of service). The Company may require the Executive to provide a medical certificate in respect of any absence from work on sick leave of two or more consecutive days. Sick leave not taken during any calendar year will not be carried forward into subsequent calendar years.

3.11 Subject to applicable law, if:

(a) the Executive is absent from work for more than 180 consecutive days or an aggregate period of 180 days in any twelve-month period by reason of illness or incapacity (whether physical or otherwise); or

(b) the Company reasonably determines that the Executive is unable to perform his duties, services and responsibilities hereunder by reason of Illness or incapacity (whether physical or otherwise) for more than 180 consecutive days or an aggregate period of 180 days in any twelve-month period during the employment ("Disability"), the Company shall not be obligated to pay the Executive any compensation (Salary or bonus) for any period in excess of such 180 days; furthermore, any such payments during such 180-day period shall be reduced by any amount the Executive is entitled to receive as a result of such Disability under any plan provided through the Company or under state or federal law.

4 TERMINATION

4.1 The Executive's employment will terminate upon the earliest to occur of the times specified below:

(a) the close of business on the day which is one month after either party has given the other party written notice of termination of this Agreement;

(b) the close of business on a termination date mutually agreed to in writing by the Company and the Executive;

(c) immediately upon the Company delivering to the Executive a written notice of the Board of Director's decision to terminate his employment for "Cause" (as defined in Section 4.2); provided such conduct has not been cured by the Executive;

(d) the close of business on the day on which the Company shall have delivered to the Executive a written notice of the Board of Director's decision to terminate his employment because of Disability (as defined in Section 3.11(b)); and

(e) thirty (30) days after the date on which the Executive shall have delivered to the Company a written notice of the Executive's election to terminate his employment for "Good Reason" (as defined in Section 4.3); provided the Company has not cured the event giving rise to Good Reason.

If a notice of termination is given under Section 4.1(a), the Company may require that the Executive continue fulfilling his obligations and duties under this Agreement or that he take leave during the one month period, without loss of payment of the Salary, and requiring that he:

(a) not attend the place of work;

(b) not perform any or part of his obligations or duties;

(o) cease all contact and/or communication with clients, customers, suppliers, employees or contractors of the Company; and

(d) not use the Company's property and return to the Company any Company property in his care, possession or control.

4.2 For the purposes of this Agreement, termination of employment for "Cause" shall mean termination based on any of the following events, as determined by the Board of Directors of the Company acting in good faith:

(a) the conviction of the Executive by a court of competent jurisdiction of any felony involving dishonesty, breach of trust or misappropriation or the entering of a plea by the Executive of guilt or nolo contendere thereto;

(b) the commission by the Executive of an act of fraud upon, or breaching his duty of loyalty to, the Company or any of its subsidiaries;

(c) the commission by the Executive of any act of serious or wilful misconduct;

(d) the Executive is guilty of conduct (whether or not during the course of the Executive's duties) tending to bring the Company into disrepute;

(e) a conviction for wilful violation of any law, rule or regulation governing the operation of the Company or any of its subsidiaries;

(f) the serious and persistent failure or refusal of the Executive, after seven (7) days written notice thereof (or a lesser period of notice if the proper performance of his job requires the Executive to do something within seven (7) days), to reasonably attempt to perform his job duties and responsibilities (other than failure or refusal resulting from incapacity due to physical disability or mental illness);

(g) a serious or persistent breach by the Executive of any provision of this Agreement, which breach continues for more than seven (7) days after written notice has been given to the Executive, such notice setting forth in reasonable detail the nature of such breach, provided, however, that if the Executive, in breach of the last section of clause 1.4 of this Agreement, refuses to travel to Australia more than 4 times in a calendar year (excluding any travel voluntarily undertaken by the Executive), then this shall not constitute "Cause'' for the purposes of this Agreement;

(h) the Executive suffers a Disability (as defined in clause 3.11) which the Company reasonably determines prevents him from performing his duties for a period in excess of 180 consecutive days or an aggregate period of 180 days in any period of 12 months; or

(i) the deliberate and wilful disregard of the written rules or policies of the Company or the regulations of the Australian Stock Exchange governing the Company or any acts of inappropriate behaviour, discrimination or sexual harassment, which results, or, in the reasonable opinion of the Board of Directors could result in a material loss, damage or injury to the Company or its reputation.

Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company.

4.3 The Executive may terminate his employment with the Company for Good Reason. For purposes of this Agreement, "Good Reason" shall mean the occurrence of any of the following events:

(a) a reduction in the Executive's then-current annual base salary or bonus opportunity without the Executive's consent; or

(b) any failure to offer the Executive the same level of benefits offered to similarly situated employees; or

(c) a significant diminution in the Executive's duties or responsibilities; or

(d) the relocation of the Executive's primary business location to a location that increases the Executive's commute by more than fifty (50) miles compared to the commute of the Executive to the Executive's then-current primary business location; or

(e) the failure of the Company to obtain a reasonably satisfactory agreement from any successor to assume and agree to perform this Agreement;

provided that any of the events described in clauses (a), (b), (c), (d) or (e) of this Section 4.3 shall constitute Good Reason only if the Company fails to cure such event within thirty (30) days or such longer period as is reasonable after receipt from the Executive of written notice of the event which constitutes Good Reason; provided, further, that "Good Reason" shall cease to exist for an event on the sixtieth (60th) day following its occurrence, unless the Executive has given the Company written notice thereof prior to such date.

4.4 In the event of termination of this Agreement, for whatever reason, the Executive agrees to cooperate with the Company and to be reasonably available to the Company with respect to continuing and/or future matters arising out of the Executive's employment or any other relationship with the Company, whether such matters are business-related, legal or otherwise, for a period of up to three months unless a shorter period has been agreed by the Company. The Company agrees to reimburse the Executive for the Executive's reasonable travel expenses incurred in complying with the terms of this paragraph upon delivery by the Executive to the Company of valid receipts for such expenses. The provisions of this paragraph shall survive termination of this Agreement.

4.5 Except with the prior written approval of the Board of Directors, the Executive must not make any comment or statement about the fact or termination of the Executive's employment and this Agreement to any person for a period of 12 months. The provisions of this paragraph shall survive termination of this Agreement.

5 TERMINATION PAYMENTS

5.1 If, during the term of this Agreement, the Company shall terminate the Executive's employment other than for Cause or Disability or the Executive shall terminate his employment for Good Reason:

(a) the Company shall pay to the Executive, in a lump sum in cash within 75 days after the date of the notice of termination ("Date of Termination"), the sum of:

(i) the Executive's pro rata annual base salary up to the Date of Termination to the extent not theretofore paid,

(ii) with respect to any short-term incentive bonus contemplated under clause 3.4 based solely on ongoing employment and that may have been payable at the end of the then current fiscal year, the amount (if any) determined by the Board, in its absolute discretion; and

(iii) with respect to any bonus or other incentive payable based on the achievement of performance targets or milestones, if the performance target or milestone:

(A) has been met on or before the Date of Termination, the amount of that bonus or incentive; or

(B) has not been met on or before the Date of Termination, the amount (if any) determined by the Board to be fair in all the circumstances;

(iv) any accrued vacation pay, in each case to the extent not theretofore paid;

(b) the Company shall also pay to Executive the Executive's monthly base salary until the earlier of the date that is six months following the Date of Termination or the date upon which the Executive obtains new full time employment ("Severance Period") (provided that the Executive continues to comply with those provisions of this Agreement which survive termination). This provision shall only apply to a termination after May 1, 2010;

(c) the Company shall maintain in effect during the Severance Period, at its sole expense, all group insurance (including life, health, accident and disability insurance) and, to the extent permitted by applicable law, all other employee benefit plans, programs or arrangements in which the Executive was participating at any time during the six (6) month period preceding such termination. During the Severance Period if the Company is unable to maintain the health insurance plan in which the Executive was participating or provide the Executive coverage under the health insurance plan because the Executive is ineligible for coverage under the terms thereof, the Executive shall be eligible to receive continued group health plan benefits to the extent authorized by and consistent with 29 U.S.C. § 1161 et seq. (COBRA), with the cost of the regular premium for such benefits shared in the same relative proportion by the Executive and the Company as in effect on the date of termination. In all cases, provision of benefits hereunder shall continue only so long as the Executive continues to comply with and not breach the terms of this Agreement and in the event of such noncompliance or breach, all benefits (except as required by law) shall immediately be terminated; and

(d) Any non-vested stock options or restricted stock in the Company held by the Executive or in a trust established by the Executive for the benefit of his spouse, children or heirs, and whose milestone or performance target (if any) was achieved or satisfied on or before the Date of Termination, will continue to vest according to its applicable vesting schedule during the Severance Period but only so long as the Executive continues to comply with and not breach the terms of this Agreement and in the event of such noncompliance or breach, all then unvested stock options and restricted stock shall immediately lapse and be terminated.

5.2 If, during the term of this Agreement, the Company shall terminate the Executive's employment for Cause, the Executive shall terminate his employment other than for Good Reason or if the Executive dies or suffers a Disability (as defined in clause 3.11)) during the term, then, the Executive shall be entitled to receive from the Company only such portion of the base salary and vacation pay as is accrued and unpaid through the date of such termination. All then unvested stock options and unvested restricted stock of the Executive will immediately lapse and be forfeited.

5.3 If: (i) the Executive is involuntarily terminated by the Company (or its successor entity) other than for Cause; or (ii) the Executive voluntarily terminates his employment with the Company (or its successor entity) for Good Reason, in either case either within the two (2) months immediately preceding a Change in Control or in the six (6) months immediately following a Change in Control (either constituting a "Change in Control Termination"), the Executive shall be entitled to the following severance benefits: (i) the equivalent of twelve (12) months of his base salary as in effect immediately prior to the Change in Control Termination date, subject to employment tax withholdings and deductions, payable in a lump sum on the first regularly scheduled payroll date following the Change in Control Termination date; (ii) for a period of six (6) months following a Change in Control Termination, the Company shall also reimburse the Executive for the cost of COBRA premiums to be paid in order for the Executive to maintain medical insurance coverage that is substantially equivalent to that which the Executive received immediately prior to the termination provided, however, that the Company's obligation to pay Executive's COBRA premiums will cease immediately in the event Executive becomes eligible for group health insurance during the six (6) month period, and the Executive hereby agrees to promptly notify the Company if he becomes eligible to be covered by group health insurance in such event; and (iii) the Company will vest the equivalent of seventy-five percent (75%) of the Executive's then unvested options to purchase shares of Company's Common Stock and such vesting shall occur upon the occurrence of the Change in Control in the case of a Change in Control Termination occurring prior to the Change in Control or upon termination in the case of a Change in Control Termination occurring after the Change in Control. All other terms and conditions set forth in the options, the Company's stock plan, and the applicable stock option agreements shall remain in full force and effect.

5.4 For purposes of this Agreement, "Change in Control" means (A) any merger or consolidation of the Company with or into another entity, other than a merger or consolidation in which the stockholders of the Company immediately before the transaction will own immediately thereafter, directly or indirectly, securities having a

majority in ordinary voting power of the outstanding securities of the surviving or resulting entity, (B) any sale by the Company of all or substantially all of its assets, other than a sale of assets in which the stockholders of the Company immediately before the transaction will own immediately thereafter, directly or indirectly, securities having a majority in ordinary voting power of the outstanding securities of the acquiror of the Company's assets, or (C) any sale or other transfer of shares of stock by one or more stockholders of the Company as a result of which any one transferee, together with the transferee's affiliates, will become in a transaction or series of related transactions the owner of a majority of the ordinary voting power of the Company's outstanding stock; provided, however, that any new issuance of capital stock of the Company to one or more third parties (including any recognised venture capital investors investing on terms that are within normal practices for such investors) for the main purpose of providing new funding for the Company or in connection with a joint venture or other documented business alliance with any such third party shall not constitute a Change in Control.

5.5 Anything in this Agreement to the contrary notwithstanding, if at the time of the Executive's termination of employment, the Executive is considered a ''specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Internal Revenue Code of 1986, as amended (the "Code"), and if any payment that the Executive becomes entitled to under this Agreement is considered deferred compensation subject to interest and additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, then no such payment shall be payable prior to the date that is the earliest of (1) six months after the Executive's date of termination, (ii) the Executive's death, or (iii) such other date as will cause such payment not to be subject to such interest and additional tax, and the initial payment shall include a catch-up amount covering amounts that would otherwise have been paid during the first six-month period but for the application of this Section 5.3.

5.6 In all cases, severance payments hereunder shall continue only so long as the Executive continues to comply with and not breach the terms of this Agreement and in the event of such noncompliance or breach, all severance payments shall immediately be terminated.

5.7 The foregoing payments upon termination shall constitute the total payments due the Executive upon termination under this Agreement.

6 EXECUTIVE COVENANTS

6.1 Unauthorized Disclosure

The Executive agrees and understands that in the Executive's position with the Company, the Executive will be exposed to and receive information relating to the confidential affairs of the Company, including but not limited to technical information, clinical test data, business and marketing plans, strategies, customer information, other information concerning the Company's products, promotions, development, financing, expansion plans, business policies and practices, and other forms of information considered by the Company to be confidential and in the nature of trade secrets. Except to the extent that the proper performance of the Executive's duties, services and responsibilities hereunder may require disclosure, and except as such information (i) was known to the Executive prior to his employment by the Company or (ii) was or becomes generally available to the public other than as a result of a disclosure by the Executive in violation of the provisions of this Section 6.1, the Executive agrees that during the employment and thereafter the Executive will keep such information confidential and not disclose such information, either directly or indirectly, to any third person or entity without the prior written consent of the Company. This confidentiality covenant has no geographical or territorial restriction and applies for two years after Salary was last paid to the Executive. Upon termination of the Executive's employment under this Agreement, the Executive will promptly supply to the Company all property including laptops, mobile phones, memory storage devices, keys, notes, memoranda, writings, lists, files, reports, customer lists, correspondence, tapes, disks, cards, clinical test data, logs, machines, technical data or any other tangible product or document which has been produced by, received by or otherwise submitted to the Executive during or prior to the Employment.

6.2 Non-competition

By and in consideration of the Company's entering into this Agreement and the Salary and benefits to be provided by the Company hereunder, and further in consideration of the Executive's exposure to the proprietary information of the Company, the Executive agrees that except as otherwise expressly provided by this Agreement, the Executive will not, during the employment, directly or indirectly own, manage, operate, join, control, be employed by, or participate in the ownership, management, operation or control of or be connected in any manner, Including but not limited to holding the positions of shareholder, director, officer, consultant, independent contractor, employee, partner, or investor, with any Competing Enterprise. For purposes of this paragraph, the term "Competing Enterprise" shall mean any person, corporation, partnership or other entity which is or which the Board of Directors in its reasonable opinion, deems to be in competition with the business of the Company. The prohibition of this clause 6.2 shall not be deemed to prevent the Executive from owning 1% or less of any class of equity securities of an entity that has a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934, as amended. The non- competition clause contained in this Section 6.2 shall remain in full force and effect until one year from the termination of the Executive's employment for any reason.

6.3 Non-solicitation

During the Executive's employment and for one year from the termination of the Executive's employment for any reason, the Executive shall not, directly or indirectly, interfere with the Company's relationship with, or endeavour to entice away from the Company, any person who at any time during the Executive's employment was an employee of the Company.

6.4 Transactions Offered to the Corporation; Proprietary Materials

During the term of his employment hereunder, the Executive agrees to bring to the attention of the Board of Directors, all proposals, business opportunities or investments

of whatever nature, in areas in which the Company and/or any of its subsidiary companies is active or may be interested in becoming active, which are created or devised by the Executive or come to the attention of the Executive and which might reasonably be expected to be of interest to the Company and/or any its subsidiary companies. Without limiting the generality of the foregoing, Executive acknowledges and agrees that memoranda, notes, records and other documents made or compiled by the Executive or made available to the Executive during the term of this Agreement concerning the business and/or activities of the Company and/or any of its subsidiary companies shall be the Company's property and shall be delivered by the Executive to the Board of Directors upon termination of this Agreement or at any other time at the request of the Board of Directors.

6.5 Remedies

The Executive agrees that any breach of the terms of this Section 6 would result in irreparable injury and damage to the Company for which the Company would have no adequate remedy at law; the Executive therefore also agrees that in the event of said breach or any threat of breach, the Company shall be entitled to an immediate injunction and restraining order to prevent such breach and/or threatened breach and/or continued breach by the Executive and/or any and all persons and/or entities acting for and/or with the Executive, without having to prove damages or post a bond, in addition to any other remedies to which the Company may be entitled at law or in equity. The terms of this paragraph shall not prevent the Company from pursuing any other available remedies for any breach or threatened breach hereof, including but not limited to the recovery of damages from the Executive.

6.6 The provisions of subsections 6.1, 6.2, 6.3, 6.4 and 6.5 of this Section 6 shall survive any termination of this Agreement and the Executive's employment. The existence of any claim or cause of action by the Executive against the Company, whether predicated on this Agreement or otherwise, shall not constitute a defence to the enforcement by the Company of the covenants and agreements of this Section 6.

7 NOTICES

Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given (i) if personally delivered, when so delivered, or (ii) if mailed, three business days after having been placed in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed to the party to whom it is directed at the address set forth below:

Sunshine Heart, Inc
Unit 3, 12 Frederick Street
St Leonards, NSW 2065
Australia
Attention: one copy to the Chairman and
one copy to the Company Secretary

If to the Executive:

Or such other local address for the Executive as reflected in the Company's records or to such other address as to which notice is given pursuant to this Agreement.

8 BINDING EFFECT/ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, personal representatives, estates, successors (including, without limitation, by way of merger) and assigns. Notwithstanding the provisions of the immediately preceding sentence, the Executive shall not assign all or any portion of this Agreement without the prior written consent of the Company.

9 ENTIRE AGREEMENT

This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes, as of the Execution Date, all prior agreements, written or oral, between them as to such subject matter. This Agreement may not be amended, nor may any provision hereof be modified or waived, except by an instrument in writing duly signed by the party to be charged.

10 SEVERABILITY

If any provision of this Agreement, or any application thereof to any circumstances, is invalid, in whole or in part, such provision or application shall to that extent be severable and shall not affect other provisions or applications of this Agreement.

11 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Minnesota, without reference to the principles of conflict of laws. The parties agree and consent to the condition that any litigation arising out of this Agreement shall be venued in the state or federal courts within the State of Minnesota.

12 MODIFICATIONS AND WAIVERS

No provisions of this Agreement may be modified, altered or amended except by an instrument in writing executed by the parties hereto. No waiver by either party hereto of any breach by the other party hereto of any provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions at the time or at any prior or subsequent time.

13 HEADINGS

The headings contained herein are solely for the purposes of reference, are not part of this Agreement and shall not in any way affect the meaning or interpretation of this Agreement.

14 COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by authority of its Board of Directors, and the Executive has hereunto set his hand, as of the day and year first above written.

Sunshine Heart, Inc.

By: /s/ Nicholas B. Callinan
Nicholas B. Callinan
Chairman

Date: December 18, 2009

David A. Rosa

/s/ David A. Rosa

David A. Rosa

Date: December 21, 2009

Exhibit 10.15

Sunshine Heart, Inc.

3 August, 2004

Dr William Peters
Director
WSP Trading Limited
93 WSPsett Road
Remuera
Auckland 1005
New Zealand
Dear William:

On behalf of Sunshine Heart Company Pty Limited (the "Company"), I am pleased to offer WSP Trading Limited ("WSP") the following contract for the provision of technical and medical advisory services. The terms of this contract will only become effective on the closing of the Company's public offering on the Australian Stock Exchange (the "ASX Financing").

1. **Fees.** Effective and contingent on the closing of the ASX Financing, WSP will receive a retainer of A$16,667, which is equivalent to A$200,000 on an annualized basis. This payment will be payable within 7 days of each month-end or such other time as is agreed between the parties. It is recognized that you are not an employee of the Company and therefore the Company is not responsible to you in relation to annual leave, sick leave, redundandacy, superannuation or other employment related obligations.

2. **Services.** Unless otherwise agreed with the Company, effective and contingent on the closing of the ASX Financing, WSP will be responsible for the following services:

1. William Peters will represent the Company in the capacity of Medical Director and Chief Technical Officer.

2. Performance of company medical and technical functions, in co-operation with the Board — including attendance at Board Meetings and the Annual General Meeting;

3. Liaison with shareholders and investors as required;

4. Liaison with auditors, bankers, lawyers, insurers, stockbrokers or any other professional advisors as required;

5. Advice to Boardmembers, contractors and Company employees in the capacity of Chief Technical Officer; and

6. Supervision of animal and clinical trials in Australia, New Zealand, Europe and the United States

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7. Liasion with quality and regulatory staff and consultants and with engineering and clinical staff and consultants in the conduct of the Company's affairs .

The Company will be entitled to all of the benefits and profits arising from or incident to all such work services and advice provided to the Company in the performance of this contract. You and WSP agrees that should you or WSP directly or indirectly engage or participate in any business that is competitive in any manner with the business of the Company, whether or not for compensation, you must notify the Company's Board of Directors in writing and that, if resolved by the Board of Directors, this contract may be terminated upon the earlier of one month's notice or the date upon which the engagement or participation in the competitor's business is agreed by you or WSP.

4. **Confidentiality Agreement.** Please sign and return to me the Confidential Information And Invention Assignment Agreement (the "Confidentiality Agreement"), a copy of which is attached as Exhibit A. You and WSP's obligations under the Confidentiality Agreement will continue and remain in force during this contract and after the termination of this contract.

5. **No Conflicting Obligations.** You represent to the Company that WSP's performance of services for the Company will not breach any other agreement to which it is a party and that it has not, and will not during the term of this contract with the Company, enter into any oral or written agreement in conflict with any of the provisions of this letter or the Company's policies as provided to you up to the date of this contract. You, or WSP's employees or representatives are not to use or disclose to any person associated with the Company, any confidential or proprietary information belonging to any former employer of you or other person or entity with respect to which you owe an obligation of confidentiality under any agreement or otherwise. The Company does not need and will not use such information and we will assist you, or WSP's employees or representatives in any way possible to preserve and protect the confidentiality of proprietary information belonging to third parties. Also, we expect you, or WSP's employees or representatives to abide by any obligations you, your company's employees or representatives may have to refrain from soliciting any person employed by or otherwise associated with any former employer and suggest that you, WSP's employees or representatives refrain from having any contact with such persons until such time as any non-solicitation obligation expires.

6. **General Obligations.** Whilst performing services for the Company, you, or WSP's employees or representatives will be expected to adhere to the Company's standards of professionalism, loyalty, integrity, honesty, reliability and respect for all. Please note that the Company is an equal opportunity employer. The Company does not permit, and will not tolerate, the unlawful discrimination or harassment of any employees, consultants, or related third parties on the basis of sex, race, color, religion, age, national origin or ancestry, marital status, veteran status, mental or physical disability or medical condition, sexual orientation, pregnancy, childbirth or related medical condition, or any other status protected by applicable law. Any questions regarding this clause should be directed to the writer.

7. **Termination**

(a) This contract with the Company may be terminated for any reason by either WSP or the Company giving one months notice of termination. Alternatively, the Company may at its election make a payment of one month's retainer in lieu of actual notice.

(b) The Company may terminate this contract without notice if:

(i) you, or WSP's employees or representatives commit an act of serious or willful misconduct whilst performing services for the Company;

(ii) you , or WSP's employees or representatives commit an act of fraud or material misrepresentation against the Company or any supplier to, or customer of the Company;

(iii) you, or WSP's employees or representatives mislead the Company in a material way;

(iv) you, or WSP's employees or representatives are convicted of a criminal offence, which in the reasonable opinion of the Company affects the performance of the services outlined in this contract;

(v) you, or WSP's employees or representatives commit a serious or persistent breach of this contract;

(vi) WSP enters into bankruptcy or administration.

8. **Solicitation of Employees, Consultants and Other Parties.** You agree that during the term of this contract (the "Contract") with the Company, and for a period of 24 months following the termination of the Contract with the Company for any reason, you or WSP shall not directly or indirectly solicit, induce, recruit or encourage any of the Company's employees or consultants to terminate their relationship with the Company, or attempt any of the foregoing, either for yourself or any other person or entity. For a period of 24 months following termination of your Relationship with the Company for any reason, you or WSP shall not solicit any licensor to or customer of the Company or licensee of the Company's products, that are known to you, with respect to any business, products or services that are competitive to the products or services offered by the Company or under development as of the date of termination of the Contract with the Company.

We are all delighted to be able to extend to WSP this contract and look forward to working with you and your company. To indicate your acceptance of the Company's offer, please sign and date this letter in the space provided below and return it to me. The Company requests that the Contract will begin on the closing of the ASX Financing. This letter, together with the Confidentiality Agreement, set forth the new terms of the Contract with the Company, effective and contingent on the closing of the ASX Financing, and will supersede any prior representations or agreements, whether written or oral, as of such time.

This letter will be governed by the laws of New South Wales, without regard to its conflict of laws provisions. This letter may not be modified or amended except by a written agreement, signed by an officer of the Company.

Very truly yours,
SUNSHINE HEART Company Pty Ltd

By: ______________________________

ACCEPTED AND AGREED:

____
William Peters, Director WSP Trading Limited

____
Date

EXHIBIT 21

Name	Jurisdiction of Organization
Sunshine Heart Company Pty Ltd	Australia