As filed with the Securities and Exchange Commission October 25, 2021.

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

AMENDMENT NO. 1 TO
FORM S-1
REGISTRATION STATEMENT
UNDER THE
SECURITIES ACT OF 1933

BLUEJAY DIAGNOSTICS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**3841**	**47-3552922**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

360 Massachusetts Avenue, Suite 203
Acton, MA 01720
Telephone: (844) 327-7078
(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Neil Dey
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Approximate date of commencement of proposed sale to the public: **As soon as practicable after the effective date of this registration statement.**

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☒	Smaller reporting company ☒
	Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of each Class of Securities to be Registered	Maximum Aggregate Offering Price[1][2][3]	Amount of Registration Fee
Units:[7]	$ 20,700,000	$ 2,258.37
Common stock, par value $0.0001 per share[4]	—	—
Warrants to purchase common stock[4]	—	—
Shares of common stock issuable upon exercise of the Class A Warrants	$ 10,350,000	$ 1,129.19
Shares of common stock issuable upon exercise of the Class B Warrants	$ 20,700,000	$ 2,258.37
Series E Convertible Preferred Stock[6]	—	—
Shares of common stock underlying the Series E Convertible Preferred Stock	—	—
Underwriter's warrants[5]	—	—
Common stock underlying Underwriters' warrants[5]	$ 1,293,750	$ 141.15
Common Stock to be sold by selling stockholder[8]	$ 45,000,000	$ 4,909.50
Total	$ 98,043,750	$ 10,696.57[9]

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(1) Estimated solely for the purpose of calculating the amount of the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended.

(2) Pursuant to Rule 416, the securities being registered hereunder include such indeterminate number of additional securities as may be issuable to prevent dilution resulting from stock splits, stock dividends or similar transactions.

(3) Includes the price of additional shares of common stock and warrants to purchase shares of common stock that the underwriters have the option to purchase to cover overallotments, if any.

(4) Included in the price of the units. No separate registration fee is required pursuant to Rule 457(g) under the Securities Act.

(5) Estimated solely for the purposes of calculating the registration fee pursuant to Rule 457(g) under the Securities Act. We have calculated the proposed maximum aggregate offering price of the common stock underlying the underwriter's warrants by assuming that such warrants are exercisable at a price per share equal to 125% of the public offering price of the common stock in the units sold in this offering.

(6) The maximum aggregate offering price of the common stock proposed to be sold in the offering will be reduced on a dollar-for-dollar basis based on the offering price of any Series E Convertible Preferred Stock offered and sold in the offering.

(7) Each unit includes (i) one share of common stock (or, at the purchaser's election, one share of Series E Convertible Preferred Stock), (ii) one Class A Warrant, and (iii) one Class B Warrant.

(8) Represents 4,500,000 shares of common stock at an assumed price of $10.00, the public offering price.

(9) Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Registration Statement contains two prospectuses, as set forth below.

- Public Offering Prospectus. A prospectus to be used for the public offering of up to 1,800,000 units of the Registrant (the "Public Offering Prospectus") through the underwriter named on the cover page of the Public Offering Prospectus.
- Resale Prospectus. A prospectus to be used for the potential resale by the selling stockholder set forth therein of 4,500,000 shares of common stock (the "Resale Prospectus").

The Resale Prospectus is substantively identical to the Public Offering Prospectus, except for the following principal points:

- they contain different front covers;
- all references in the Public Offering Prospectus to "this offering" or "this initial public offering" will be changed to "the IPO," defined as the underwritten initial public offering of our common stock, in the Resale Prospectus;
- all references in the Public Offering Prospectus to "underwriters" will be changed to "underwriters of the IPO" in the Resale Prospectus;
- they contain different Use of Proceeds sections;
- a "Selling Stockholders" section is included in the Resale Prospectus;
- the contain different "Summary — The Offering" sections;
- the section "Shares Eligible For Future Sale — Selling Stockholder Resale Prospectus" from the Public Offering Prospectus is deleted from the Selling Stockholder Resale Prospectus;
- the Underwriting section from the Public Offering Prospectus is deleted from the Resale Prospectus and a Plan of Distribution section is inserted in its place;
- the Legal Matters section in the Resale Prospectus deletes the reference to counsel for the underwriters; and
- they contain different back covers.

The Registrant has included in this Registration Statement a set of alternate pages after the back cover page of the Public Offering Prospectus (the "Alternate Pages") to reflect the foregoing differences in the Resale Prospectus as compared to the Public Offering Prospectus. The Public Offering Prospectus will exclude the Alternate Pages and will be used for the public offering by the Registrant. The Resale Prospectus will be substantively identical to the Public Offering Prospectus except for the addition or substitution of the Alternate Pages and will be used for the resale offering by the selling shareholder.

Table of Contents

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS Subject to Completion, dated October 25, 2021

1,800,000 Units consisting of:

Common Stock
Class A Warrants
Class B Warrants

This is an initial public offering of units of our securities. Prior to this offering, there has been no public market for shares of our common stock. We expect that the initial public offering price will be $10.00 per unit.

Each Unit consists of (a) one share of our common stock (or, at the purchaser's election, one share of Series E Convertible Preferred Stock), (b) one Class A warrant (the "Class A Warrants") to purchase one share of our common stock at an exercise price equal to $5.00 per share (or 50% of the unit offering price), exercisable until the fifth anniversary of the issuance date, and (c) one Class B warrant (the "Class B Warrants," and together with the Class A Warrants, the "Warrants") to purchase one share of our common stock at an exercise price equal to $10.00 per share (or 100% of the unit offering price), exercisable until the fifth anniversary of the issuance date. Holders of Class B Warrants may exercise such warrants on a "cashless" basis upon the earlier of (i) 10 trading days from the issuance date of such warrant or (ii) the time when $10.0 million of volume is traded in our common stock, if the volume weighted average price ("VWAP") of our common stock on any trading day on or after the date of issuance fails to exceed the exercise price of the Class B Warrant (subject to adjustment for any stock splits, stock dividends, stock combinations, recapitalizations and similar events). The shares of our common stock and the Warrants are immediately separable and will be issued separately, but will be purchased together in this offering.

We are also offering to those purchasers, if any, whose purchase of our common stock in this offering would otherwise result in such purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, at the election of the purchaser prior to the date of issuance, 9.99%) of our outstanding common stock immediately following the consummation of this offering, the opportunity to substitute Series E Convertible Preferred Stock, referred to as "Preferred Stock" for the shares of common stock included in the Units purchased by that investor. Each share of Preferred Stock is being sold together with the same Warrants described above being sold with each share of common stock. For each share of Preferred Stock purchased in this offering in lieu of common stock, we will reduce the number of shares of common stock being sold in the offering on a one-for-one basis. Pursuant to this prospectus, we are also offering the shares of common stock issuable upon conversion of the Preferred Stock.

Each share of Preferred Stock is convertible into one share of our common stock (subject to adjustment as provided in the related designation of preferences) at any time at the option of the holder, provided that the holder will be prohibited from converting Preferred Stock into shares of our common stock if, as a result of such conversion, the holder, together with its affiliates, would own more than 4.99% (or, at the election of the purchaser prior to the date of issuance, 9.99%) of the total number of shares of our common stock then issued and outstanding. However, any holder may increase such percentage to any other percentage not in excess of 9.99%, provided that any increase in such percentage shall not be effective until 61 days after such notice to us. The shares of Preferred Stock will otherwise have the preferences, rights and limitations described under "Description of Capital Stock - Series E Convertible Preferred Stock Being Issued in this Offering" in this prospectus.

Prior to this offering, there has been no public market for our common stock. In connection with this offering, we have applied to list our common stock for trading on the NASDAQ Capital Market under the symbol "BJDX". Although we expect our common stock to be listed on the NASDAQ Capital Market, there can be no assurance that an active trading market will develop. If we do not meet all of Nasdaq's initial listing criteria, we will not complete this offering. We do not intend to apply for any listing of either of the Warrants on the Nasdaq Capital Market or any other securities exchange or nationally recognized trading system, and we do not expect a market to develop for the Class A Warrants or the Class B Warrants.

The registration statement of which this prospectus forms a part includes a separate prospectus to be used for the potential resale by a selling stockholder of 4,500,000 shares of common stock. Any shares sold by the selling stockholder until our common stock is listed or quoted on an established public trading market will take place at $10.00 per share, which is the public offering price of the Units we are selling in our initial public offering. Thereafter, any sales will occur at prevailing market prices or in privately negotiated prices.

Investing in our securities involves a high degree of risk. See *"Risk Factors"* beginning on page 11 for a discussion of certain risks that you should carefully consider in connection with an investment in our common stock.

	Per Unit[2]	Total[3]
Public offering price	$	$
Underwriting discounts[1]	$	$
Proceeds to us, before expenses	$	$

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(1) The underwriters will receive compensation in addition to the underwriting discounts and commissions. We refer you to "Underwriting" beginning on page 83 of this prospectus for additional information regarding underwriting compensation.

(2) The public offering corresponds to an assumed public offering price per share of common stock or share of Series E Convertible Preferred Stock of $9.98, an assumed public offering price per Class A warrant of $0.01, and an assumed public offering price per Class B Warrant of $0.01.

(3) Persons affiliated with us may purchase our securities in this offering.

We have granted the underwriter an option, exercisable one or more times in whole or in part, to purchase up to 270,000 additional shares of common stock and/or Class A Warrants to purchase up to an aggregate of 270,000 shares of common stock and/or Class B Warrants to purchase up to an aggregate of 270,000 shares of common stock, in any combinations thereof, from us at the public offering price per security, less the underwriting discounts and commissions, for 45 days after the date of this prospectus to cover over-allotments, if any.

We are an "emerging growth company" as defined in Section 2(a) of the Securities Act of 1933, as amended, and we have elected to comply with certain reduced public company reporting requirements.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the securities against payment on or about _____, 2021.

Joint Book-Running Managers

Dawson James Securities, Inc. **I-Bankers Direct, LLC**

The date of this prospectus is _____, 2021

ABOUT THIS PROSPECTUS

Neither we nor the underwriters have authorized anyone to provide you with any information or to make any representations other than as contained in this prospectus or in any free writing prospectuses we have prepared. Neither we nor the underwriters take responsibility for, and provide no assurance about the reliability of, any information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of the securities. Our business, financial condition, results of operations and prospects may have changed since that date.

No action is being taken in any jurisdiction outside the United States to permit a public offering of our securities or possession or distribution of this prospectus in any such jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions about this offering and the distribution of this prospectus applicable to those jurisdictions.

INDUSTRY AND MARKET DATA

This prospectus contains estimates, projections and other information concerning our industry, our business, the science of our products and the markets for our products, including data regarding the incidence of certain medical conditions and the scientific basis of our products. We obtained the industry, science, market and similar data set forth in this prospectus from our internal estimates and research and from academic and industry research, publications, surveys, and studies conducted by third parties.

The content of the above sources, except to the extent specifically set forth in this prospectus, does not constitute a portion of this prospectus and is not incorporated herein. Information that is based on estimates, forecasts, projections, market research, scientific research, or similar methodologies is inherently subject to uncertainties and actual events or circumstances may differ materially from events and circumstances that are assumed in this information.

TABLE OF CONTENTS

PROSPECTUS SUMMARY

This summary highlights information contained in other parts of this prospectus. Because it is a summary, it does not contain all of the information that you should consider in making your investment decision. Before investing in our securities, you should read the entire prospectus carefully, including our financial statements and the related notes included in this prospectus and the information set forth under the headings "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

When used herein, unless the context requires otherwise, references to the "Company," "we," "our" and "us" refer to Bluejay Diagnostics, Inc., a Delaware corporation, collectively with its wholly owned subsidiary SpinCo, LLC.

Our Company

We are a late-stage pre-revenue company focused on improving patient outcomes through a more cost efficient, rapid, near patient product for triage, diagnosis and monitoring of disease progression. We believe there is a market need for an on-site and rapid diagnostic system that can be employed for testing and monitoring. Our diagnostic system, which we refer to as "Symphony," is an exclusively licensed, patented, low-cost, system that consists of a small footprint instrument and single-use indication specific test cartridges, that we believe, if cleared, authorized, or approved by the U.S. Food and Drug Administration ("FDA"), can provide a solution to this market need rapidly and with laboratory quality results in approximately 24 minutes, in the clinic, Intensive Care Unit ("ICU"), Emergency Room ("ER") and in other hospital and clinical setting settings where rapid and reliable results are required. Currently, testing is generally performed in a laboratory, and the transportation and logistics of transporting the samples to the lab and obtaining the result takes between 8-48 hours. Our platform is a sample-to-result system that has been shown in a clinical study to provide results in 24 minutes. Our business model is to generate revenue from the sale of the table-top Symphony instrument, and from the sale of single-use indication specific cartridges that are used by the Symphony instrument for the diagnostic test. Once the test material (generally a small volume blood sample) is transferred to a single-use indication specific Symphony cartridge, no additional sample preparation or pre-processing is required. If our Symphony system is able to replicate the results from prior clinical studies and receives FDA clearance, we believe Symphony could eliminate the time required for transportation and logistics and will eliminate the number of operational 'touch-points' from 'sample-to-result' from six to two.

Our technology is the result of more than 12 years of development by our development partner and investor, Toray Industries, Inc. ("Toray"). Toray holds 100,081 shares of our common stock, which they acquired in 2020 for approximately $1.0 million. The core technology used in our Symphony platform and test cartridge product candidates are licensed from Toray.

For the past three years, Toray has used the technology successfully as a Research Use Only ("RUO") product in Japan by selected clinical institutions for measurement of Interleukin-6 ("IL-6") in rheumatoid arthritis to monitor disease progression. Based in part on this extensive development of the Symphony platform, we believe we are positioned now to complete the last stages of development needed to move to commercialization in the United States. Our initial regulatory pathway is to label and distribute Symphony as an RUO product in the U.S. Certain laboratories may choose to utilize the RUO Symphony in laboratory developed tests, or LDTs. An LDT is a type of *in vitro* diagnostic test that is designed, manufactured and used within a single laboratory. In parallel, we are pursuing 510(k) clearance from the FDA to use Symphony for *in vitro* diagnostic use. In order to expedite the submission of our 510(k), we may seek to obtain data from laboratories using the RUO Symphony in LDTs.

Prior to seeking 510(k) clearance for Symphony, we will need to complete additional clinical trials, which commenced in September 2021. In January 2022, we plan to submit a pre-submission application to the FDA presenting our study design and the data from our first set of studies. We will use the FDA's feedback, if necessary, to modify the ongoing studies and to construct the 510(k) premarket notification clearance application. We plan to submit our 510(k) premarket notification at the end of the third quarter of 2022.

Our first diagnostic test in development is for triage of sepsis in patients utilizing IL-6 as the target biomarker. According to a report by Market Data Forecast (February 2020), the total market for IL-6 testing for sepsis triage was $934 million in 2020 and is estimated to reach $1.4 billion by 2025 growing at a CAGR of 8.5%. IL-6 has important roles in both innate and adaptive immunity. IL-6 is one of the principle inflammatory cytokines released during trauma or infection. Measuring IL-6 can serve as an early warning sign of a patient's prognosis and inform quicker and more accurate healthcare. Unlike the conventional downstream biomarkers typically used for sepsis, IL6 is

released hours to days before procalcitonin (“PCT”) and c-reactive protein (“CRP”). However, due to long wait times to receive lab results, IL-6 has had limited utility in healthcare. IL-6 is an inflammatory biomarker, also considered as a ‘first-responder,’ that is elevated in patients with infection, sepsis, and septicemia. Reports have shown IL-6 concentrations correlate with severity of sepsis, progression of cancer, rheumatoid arthritis and many other severe conditions as defined by clinical and laboratory parameters. IL-6 is a clinically established biomarker for assessment of severity of infection and inflammation across many disease indications. IL-6 is a biomarker that appears early on as a ‘first responder’ during infection or inflammation. We believe detection of IL-6 early on might allow physicians to make better therapeutic and treatment decisions. Due to the clinical significance of IL-6 testing, hospital systems and centralized testing labs routinely utilize IL-6 testing.

The importance of IL-6 testing has been further highlighted during the COVID-19 pandemic, and IL-6 concentrations in blood have been found to be heightened in patients with COVID-19-associated systemic inflammation and hypoxic respiratory failure. In addition, certain of the institutions that we are working with on our clinical studies have Clinical Laboratory Improvement Amendments (“CLIA”) certified labs. These CLIA certified laboratories might adopt Symphony IL-6 tests for their clinical testing as laboratory developed tests. We intend to submit an emergency use authorization (“EUA”) application with the FDA for this indication.

We are further developing a pipeline of diagnostic tests for Symphony including triage of myocardial infarction (“MI”), congestive heart failure (“CHF”), neutropenic sepsis in cancer, and other disease diagnostic indications using the same Symphony platform. We intend to pursue the general diagnostic marketplace following a sufficient clinical trial to support a 510(k) submission with the FDA, with the initial indication as a general diagnostic test for sepsis in triage of patients. We do not currently have any regulatory cleared products and our products will need to receive regulatory authorization from FDA in order to be marketed as a diagnostic product in the United States.

Our operations to date have been funded primarily through sales of preferred stock and convertible notes. We expect to incur increasing expenses over the next two years to develop additional diagnostic tests, to expand our sales and marketing infrastructure, and our research and development activities. We believe the proceeds from this offering will be sufficient to reach commercialization.

Symphony Advantages

We believe there is a fast-growing market for near-patient, low-cost diagnostic platforms that are used for time-sensitive patient testing in life-threatening situation in hospitals, Long-Term Acute Care facilities (“LTACs”), intensive-care units (“ICUs”) and clinics to replace legacy testing formats and processes. We believe our platform is well positioned to meet this need.

In a 2016 study conducted in Japan (the “Japan Study”), which was sponsored by Toray, it was shown that the Symphony system (known as the RAY-FAST system in Japan) is able to provide accurate results within 24 minutes. The Japan Study was conducted at the University of Yamanashi Hospital in Yamanashi, Japan to evaluate the accuracy and efficacy of the Symphony system in rheumatoid arthritis patients. The results of the study were published in Cytokine, “Development of a quick serum IL-6 measuring system in rheumatoid arthritis” (Volume 95. July 2017). In the Japan Study, 150 blood samples were collected from 76 rheumatoid arthritis patients, of which 16 samples were lower than the detection limit of the Symphony system. The Japan Study then examined the correlation between the results from the Symphony system and the Fujirebio human chemiluminescent enzyme immunoassay (“CLEIA”) Lumipulse f system. The Lumipulse f system is a clinical system that has been approved by the Ministry of Health, Labour and Welfare (MHLW) of Japan for clinical use. Chemiluminescent assays are a common method for quantifying IL-6, and is the method used by all three current FDA Emergency Use Authorized tests: Roche’s Elecsys IL-6, Beckman Coulter’s Access IL-6, and Siemens Centaur Interleukin-6. Furthermore, a publication in Clinical Chemistry and Laboratory Medicine, “Interleukin-6 chemiluminescent immunoassay on Lumipulse G600II: analytical evaluation and comparison with three other laboratory analyzers” (Volume 58, Issue 10, 2020) did a comparison of a similar Lumipulse IL-6 test with Roche’s Elecsys IL-6, Beckman Coulter’s Access IL-6, and Siemens Centaur Interleukin-6 and measured comparable performance across all four systems. The serum IL-6 concentrations measured by the Symphony system were positively correlated with those measured by the CLEIA method. The correlation between the Symphony system and CLEIA method for IL-6 was $r = 0.941$ (the closer the r-value is to 1, the more closely the two variables are related). As such, the Japan Study concluded that the Symphony system was as accurate as CLEIA methods. In addition, the Japan Study confirmed the time required for the measurement of the IL-6 concentration to be 24 minutes.

Based on the results of the Japan Study, we believe the Symphony system may be able to reduce test result time from days to minutes and may be able to provide results which, as shown in the Japan Study, appear to be as accurate as those performed in a laboratory, allowing for more frequent testing, which we believe may lead to shortened hospital stays and improved patient outcomes, all of which also leads to reduced patient care costs.

Symphony is an automated diagnostic system, consisting of a fluorescence immuno-analyzer which uses a single-use diagnostic test cartridge with reagents integrated into the cartridge. Symphony utilizes a 'sample-to-result' format, which means that once a specimen is taken from the patient, it is placed in the cartridge and then the cartridge is placed inside the analyzer where the test is run without further technician intervention or additional reagent. This reduces test complexity and eliminates the need for highly trained and expensive laboratory technicians to run the tests. Our platform is designed to enable simple, rapid, and cost-effective analysis from a single clinical sample, which will allow LTACs, hospitals and clinics that traditionally could not afford more expensive or complex diagnostic testing platforms to modernize their laboratory testing and provide better patient testing at an affordable cost in time sensitive, life threatening situations. We believe our on-site testing may also help avoid potential penalties often imposed on LTACs by insurance companies for failure to monitor for potential sepsis.

We believe our technology can provide the following advantages over traditional diagnostic systems:

- *Ease of Use*. Symphony is a sample-to-result system. No sample preparation or pre-processing is required. Once the samples are placed inside the cartridge and the cartridge is placed in the analyzer, the technician does not need to monitor the test and can complete other unrelated tasks.

- *Cost Savings*. We believe that the Symphony system and our expected pricing strategy will make it possible for LTACs, clinics and many types of hospitals that have cost constraints to adopt in-house testing. Our customers will be able to either purchase the analyzer or lease it at an affordable price through a third-party leasing company. A typical Symphony test would cost approximately $80 (the cost of the single-use cartridge to the health-care facility) compared to the approximately $275 per test charged by a third-party lab, excluding overhead and transportation cost.

- *Time Savings*. Saving pre-processing time for samples reduces time to test results by approximately 1-2 hours depending on the pre-processing required for a particular assay system. Furthermore, as current tests can only be performed in a laboratory, the transportation and logistics of transporting the samples to the lab and obtaining the result takes between 8-48 hours. Based on the results of the Japan Study, we believe the Symphony system could eliminate the time required for transportation and logistics and eliminate the number of operational 'touch-points' from 'sample-to-result' from six to two.

- *Space Savings*. Symphony's significantly smaller tabletop design (14.5 inches by 10.5 inches), compared to the 100-200 square feet of space required by other diagnostic systems, will make it possible for many healthcare providers to perform in-house testing where there is limited available laboratory space.

- *Versatile Platform with the Capability to Deliver a Broad Test Menu*. Our Symphony platform has the potential for broad application across a number of areas in near-patient diagnostic testing. The same analyzer can be utilized for all of our planned future diagnostic tests.

- *Throughput and Multiple Testing Capability*. Our platform has the ability to analyze up to six distinct targets or six different patient samples simultaneously within approximately 24 minutes. This functionality will allow any organization to run multiple tests or panels on a single analyzer.

Our Market

According to research published by Allied Market Research (Global Invitro Diagnostics Market, 2020-2027), the global in vitro diagnostics market was $67.1 billion in 2019; projected to reach $91.1 billion by 2027, a compound annual growth rate ("CAGR") of 4.8% over 7 years driven by prevalence of chronic diseases including cancer, autoimmune diseases, and other inflammatory conditions. We believe the Symphony sample-to-result platform is well suited to address a subset of this market, including sepsis, cardio-metabolic diseases, cancer and other diseases that require time-sensitive, near-patient testing.

According to a report by Market Data Forecast (February 2020), the total market for IL-6 testing for sepsis triage was $934 million in 2020 and is estimated to reach $1.4 billion by 2025 growing at a CAGR of 8.51%. Our platform is designed to provide on-site and rapid test results, with no pre-processing of the blood, and as such, we intend to pursue the following markets for triage:

- *Sepsis Triage using IL-6.* According to the CDC, each year, at least 1.7 million adults in America develop sepsis and nearly 270,000 Americans die as a result of sepsis. In the United States, 1 in 3 patients who dies in a hospital has sepsis. In addition, in 2016, according to the National Center for Health Statistics, 8.3 million people were served by LTACs. A major responsibility of these LTAC facilities is to monitor sepsis. We estimate the potential total market for sepsis triage testing in LTACs is approximately $2–$3 billion annually. Septic shock and multi-organ failure were the most common cause of death in COVID-19 patients, often due to suppurative pulmonary infection.

- *Chest Pain Triage using hsTNT and NT-proBNP.* According to a Washington Post article in April 2019, there are 7.6 million people in the United States each year who visit or are admitted to the hospital with chest pain. Research suggests that about 50% of those patients are admitted for further observation and care of potential heart disease, and that approximately 3.6 million people annually needed cardiac triage. Two major biomarkers that are assessed to diagnose and monitor cardiac irregularities are hsTNT and NT-proBNP. These clinically established biomarkers generated approximately $4.6 billion in revenue in 2019 and are expected to continue to grow with a CAGR of 11.2% through 2027. We are developing diagnostic tests for triage situations, using these cardiac biomarkers (hsTNT and NT pro-BNP), which were approximately a $3.6 billion market in 2020 and are estimated to be $5.5 billion by 2025, a CAGR of 8.9% (report by Markets and Markets, January 2021).

The CDC National Center for Health Statistics estimates that the market for the diagnostic cardiac triage tests will increase by more than 20% per year over the next several years. Many factors are driving the growth of these markets, particularly the accelerating adoption of near-patient testing inside hospitals, LTACs and ICUs. According to the 2021 edition of American Hospital Association Hospital Statistics, there were approximately 6,090 hospitals in the United States in 2019, approximately 5,000 of which are considered community hospitals. According to outside research, fewer than half of these facilities have the capabilities, technology and products for near-patient diagnoses for triage of either sepsis or cardiac conditions. We believe these facilities are candidates for our diagnostic platform.

Our Business Model

Our goal is to become a leading provider of sample-to-result, ‘near-patient’ diagnostic testing in infectious, inflammatory and metabolic diseases by leveraging the strengths of our Symphony platform. We intend to market the use of Symphony by targeting our sales and marketing to LTACs, clinics, and community hospitals in the United States. We believe that the format of our low-cost, ‘near-patient’ platform will be attractive to these institutions which may not otherwise have the financial resources, laboratory space, or trained personnel to justify the purchase of a diagnostic solution. Our business model relies on the following:

- *Attractive Financing Model.* We intend to provide our customers the ability to lease our analyzer at an affordable cost through third-party financial institutions. As such, our business model will not require a significant capital outlay by health care facility customers and, by moving testing in-house, will create a profit center for the facility.

- *Recurring Revenue.* We intend to sell our customers disposable, single-use diagnostic test cartridges. Our single-use test cartridges will create a growing and recurring revenue stream for us as we sell more systems, as adoption and utilization increases, and as we develop tests for additional indications. We expect the sale of test cartridges to generate the majority of our revenue.

- *Expand our Menu of Diagnostic Products.* If adoption increases, we believe the average customer use of the Symphony platform will begin to increase. As we expand our test menu, we believe we will be able to increase our annual revenue per customer through the resulting increase in utilization. To that end, we are in development on a broad menu of diagnostic tests that we believe will satisfy growing medical needs and present attractive commercial opportunities.

- *Increase our revenue and reduce our cost of sales through a 'waterfall' sales strategy*. Our proprietary test cartridges and Symphony analyzers are manufactured through our agreements with Toray and Sanyoseiko Co., Ltd. ("Sanyoseiko"), thus reducing the manufacturing cost structure. They currently build our Symphony system and test cartridges and currently purchase materials at high per unit cost due to low purchase volumes. We believe that by focusing our initial sales efforts on multi-location institutions, increased adoption and utilization of Symphony may lead to increasing sales within a relatively small customer base. We believe sales within those institutions may lower our salesforce costs. We believe the increased unit sales of our Symphony and cartridges will not only increase revenue, but will also allow us to reduce manufacturing costs and improve gross margins enhancing our ability to provide a lower cost solution to customers.

Risks We Face

Our business and ability to execute our business strategy are subject to a number of risks of which you should be aware before you decide to buy our securities. In particular, you should consider the following risks, which are discussed more fully in the section entitled "Risk Factors":

- We expect to incur losses for the foreseeable future, until we are able to generate sufficient revenue from product sales.
- Our losses from operations could continue to raise substantial doubt regarding our ability to continue as a going concern. Our ability to continue as a going concern requires that we obtain sufficient funding to finance our operations.
- All of our product candidates are dependent on our license agreement with the Toray. The license agreement imposes significant obligations on us, including the potential obligation to pay the minimum royalties upon regulatory approval. If our license agreement with Toray is terminated for any reason, we will not be able to generate revenues and our business will likely cease.
- The regulatory approval pathway we must navigate may be expensive, time-consuming and uncertain, and may prevent us from obtaining approval for the marketing of our product candidates.
- There can be no assurance that we will successfully complete any clinical evaluation studies necessary to receive regulatory approvals.
- Our success is highly dependent on our IL-6 product candidates, which are yet to be approved and, even if approved, may not be accepted by the marketplace.
- We intend to rely solely on third parties to manufacture our product candidates.
- If Toray is unable to successfully protect or enforce its intellectual property and proprietary rights or elects to not do so, our competitive position will be harmed.
- If others claim we or Toray are infringing on their intellectual property rights, we may be subject to costly and time-consuming litigation.
- We face competition from companies that have greater resources than we do, and we may not be able to effectively compete against these companies.
- Given our lack of revenue, we may need to raise additional capital, which may not be available to us on acceptable terms, or at all.

Corporate Information

We were incorporated under the laws of Delaware on March 20, 2015. Our principal executive offices are located at 360 Massachusetts Avenue, Suite 203, Acton, MA 01720 and our telephone number is (844) 327-7078. Our corporate website address is *bluejaydx.com.* Information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus.

Implications of being an Emerging Growth Company

We qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act ("JOBS Act"). An "emerging growth company" may take advantage of reduced reporting requirements that are otherwise applicable to public companies. We intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies" including, but not limited to:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the "Sarbanes-Oxley Act";
- reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

In addition, the JOBS Act provides that an emerging growth company can take advantage of an extended transition period for complying with new or revised accounting standards, delaying the adoption of these accounting standards until they would apply to private companies. We have elected to avail ourselves of this exemption and, therefore, we are not subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

We expect to take advantage of these reporting exemptions until we are no longer an "emerging growth company." We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier. We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year following the fifth anniversary of the completion of this offering, (2) the last day of the fiscal year in which we have total annual gross revenue of at least $1.07 billion, (3) the date on which we are deemed to be a large accelerated filer, which is the end of the fiscal year in which the market value of our common stock that is held by non-affiliates exceeds $700.0 million as of the end of our most recent second fiscal quarter, and (4) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

The Offering

Securities offered by us:	Each Unit consists of (a) one share of our common stock (or, at the purchaser's election, one share of Series E Convertible Preferred Stock), (b) one Class A warrant (the "Class A Warrants") to purchase one share of our common stock at an exercise price equal to $5.00 per share (or 50% of the unit offering price), exercisable until the fifth anniversary of the issuance date, and (c) one Class B warrant (the "Class B Warrants," and together with the Class A Warrants, the "Warrants") to purchase one share of our common stock at an exercise price equal to $10.00 per share (or 100% of the unit offering price), exercisable until the fifth anniversary of the issuance date and subject to certain adjustment and cashless exercise provisions as described herein. The shares of our common stock and the Warrants are immediately separable and will be issued separately, but will be purchased together in this offering. We are also offering to those purchasers, if any, whose purchase of common stock in this offering would otherwise result in such purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, at the election of the purchaser prior to the date of issuance, 9.99%) of our outstanding common stock immediately following the consummation of this offering, the opportunity to substitute Series E Convertible Preferred Stock, referred to as "Preferred Stock" for the shares of common stock included in the Units purchased by that investor. This prospectus also relates to the offering of shares of common stock issuable upon conversion of the Preferred Stock. Each share of Preferred Stock is convertible into one share of our common stock (subject to adjustment as provided in the related designation of preferences) at any time at the option of the holder, provided that the holder will be prohibited from converting Preferred Stock into shares of our common stock if, as a result of such conversion, the holder, together with its affiliates, would own more than 4.99% (or, at the election of the purchaser prior to the date of issuance, 9.99%) of the total number of shares of our common stock then issued and outstanding. However, any holder may increase such percentage to any other percentage not in excess of 9.99%, provided that any increase in such percentage shall not be effective until 61 days after such notice to us. In the event of our liquidation, dissolution, or winding up, holders of our Preferred Stock will be entitled to receive the amount of cash, securities or other property to which such holder would be entitled to receive with respect to such shares of Preferred Stock if such shares had been converted to common stock immediately prior to such event (without giving effect for such purposes to any beneficial ownership limitation), subject to the preferential rights of holders of any class or series of our capital stock specifically ranking by its terms senior to the Preferred Stock as to distributions of assets upon such event, whether voluntarily or involuntarily. The holders of the Preferred Stock have no voting rights, except as required by law. Any amendment to our certificate of incorporation that adversely affects the powers, preferences and rights of the Preferred Stock requires the approval of the holders of a majority of the shares of Preferred Stock then outstanding.

	The holders of our Preferred Stock are entitled to receive dividends on shares of Preferred Stock equal (on an as-if-converted-to-common-stock basis, without giving effect for such purposes to any beneficial ownership limitation) to and in the same form as dividends actually paid on shares of the common stock when such dividends are specifically declared by our board of directors.
Common stock outstanding prior to this offering:	10,534,265 shares
Common stock outstanding after this offering:	12,334,265 shares (assuming no purchaser elects to purchase shares of Series E Convertible Preferred Stock in lieu of shares of common stock).
Over-allotment option:	We have granted the underwriter an option, exercisable one or more times in whole or in part, to purchase up to 270,000 additional shares of common stock and/or Class A Warrants to purchase up to an aggregate of 270,000 shares of common stock, and/or Class B Warrants to purchase up to an aggregate of 270,000 shares of common stock, in any combinations thereof, from us at the public offering price per security, less the underwriting discounts and commissions, for 45 days after the date of this prospectus to cover over-allotments, if any. See "*Underwriting*" for additional information. Because the warrants will not be listed on a national securities exchange or other nationally recognized trading market, the underwriters will be unable to satisfy any overallotment of shares and warrants without exercising the underwriters' overallotment option with respect to the warrants. As a result, the underwriters will exercise their overallotment option for all of the warrants which are over-allotted, if any, at the time of the initial offering of the shares and the warrants. However, because our common stock is publicly traded, the underwriters may satisfy some or all of the overallotment of shares of our common stock, if any, by purchasing shares in the open market and will have no obligation to exercise the overallotment option with respect to our common stock.
Use of proceeds:	We intend to use the net proceeds received from this offering (i) to obtain regulatory approvals of our product candidates, including completing any product development required to meet such regulatory requirements; and (ii) to market our products. The remaining net proceeds, if any, are expected to be used for working capital and other general corporate purposes. See "*Use of Proceeds*."
Lockups	Our executive officers, directors, and stockholders holding 5% or more of our common stock prior to the offering, collectively, have agreed with the underwriters not to sell, transfer or dispose of any shares or similar securities for a period of six months following the closing of this offering. We have also agreed, for a period of twelve months after the closing of this offering, not to sell, transfer or dispose of any shares or similar securities, subject to certain exceptions.

Underwriters' warrants	Upon the closing of this offering, we will issue to Dawson James, as representative of the underwriters, warrants entitling the representative to purchase 5% of the aggregate number of shares of common stock issued in this offering (including the shares of common stock issuable upon conversion of the Series E Convertible Preferred Stock). The warrants shall be exercisable at an exercise price of 125% of the public offering price per unit for a period of five years from the commencement of sales in this offering. For additional information, please refer to the "Underwriting" section on page 83.
Proposed listing:	We have applied to list our common stock on the NASDAQ Capital Market under the symbol "BJDX." Although we expect our common stock to be listed on the NASDAQ Capital Market, there can be no assurance that an active trading market will develop.
Risk factors:	An investment in our company is highly speculative and involves a high degree of risk. See "*Risk Factors*" and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in our securities.

The number of shares of common stock outstanding is based on 10,534,265 shares of common stock issued and outstanding as of October 20, 2021 and excludes the following:

- 4,500,000 shares of common stock issuable upon the conversion of our Series D Convertible Preferred Stock;
- 1,255,775 shares of common stock issuable upon the exercise of our outstanding warrants to purchase common stock at a weighted average price of $1.03 per share;
- 500,786 shares of common stock issuable upon the exercise of our outstanding options to purchase common stock at a weighted average price of $2.98 per share;
- 1,770,000 shares of common stock that are available for future issuance under our 2021 Stock Plan;
- 1,800,000 shares of common stock issuable upon the exercise of Class A warrants to be issued in this offering;
- 1,800,000 shares of common stock issuable upon the exercise (including the cashless exercise) of Class B warrants to be issued in this offering; and
- 90,000 shares of common stock issuable upon the exercise of warrants to be issued to the underwriters upon the closing of this offering.

Unless expressly indicated or the context requires otherwise, (i) all information in this prospectus assumes no exercise by the representative of the over-allotment option; and (ii) all common stock share and per share amounts reported in the following analysis reflect the stock dividend of 2.15 share of common stock for each outstanding share of common stock, effected June 7, 2021.

Summary Financial Data

You should read the following summary financial data together with our financial statements and the related notes appearing at the end of this prospectus, "*Capitalization*," and "*Management's Discussion and Analysis of Financial Condition and Results of Operations*." We have derived the financial data for the six months ended to June 30, 2021 from our unaudited condensed financial statements appearing elsewhere in this prospectus. We have derived the financial data for the fiscal years ended December 31, 2020 and 2019 from our audited financial statements included in this prospectus.

	For the Fiscal Year Ended December 31, 2019	For the Fiscal Year Ended December 31, 2020	For the Six Month Period Ending June 30, 2021	Pro Forma for the Six Month Period Ending June 30, 2021[1]
Results of Operations Data:				
Net loss	$ (819,842)	$ (1,158,285)	$ (834,421)	$ (834,421)
Basic and diluted net loss per common share	(0.26)	(0.37)	(0.20)	(0.20)
Weighted average number of common shares outstanding	3,147,200	3,147,200	4,201,688	4,201,688

	As of December 31, 2019	As of December 31, 2020	As of June 30, 2021	Pro Forma as of June 30, 2021[1]	Pro Forma as adjusted as of June 30, 2021[2]
Balance Sheet Data:					
Cash	$ 96,011	$ 912,361	$ 2,400,457	$ 3,765,457	$ 19,337,457
Working capital	(276,197)	(787,196)	(516,185)	3,461,930	18,766,039
Total assets	916,518	1,517,332	3,125,544	4,490,544	19,794,653
Total liabilities	1,380,826	1,845,390	3,249,029	635,914	635,914
Total redeemable preferred stock	2,468,130	3,878,115	—	—	—
Total stockholders' equity (deficit)	(2,932,438)	(4,206,173)	(123,485)	3,854,630	19,158,739

(1) Reflects issuance on August 4, 2021 of an additional $1.5 million in principal amount of convertible debentures, after deducting the origination fees and estimated offering expenses payable by us, and the mandatory conversion of the total $4.5 million in principal amount of debentures into Series D convertible preferred stock.

(2) Reflects the sale and issuance of all the shares of common stock offered hereby, at an assumed public offering price of $10.00 per unit, after deducting the underwriting discounts and estimated offering expenses payable by us.

RISK FACTORS

Investing in our securities involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this prospectus, including the financial statements and the related notes included elsewhere in this prospectus, before deciding whether to invest in shares of our common stock. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business. If any of the following risks actually occurs, our business, financial condition, results of operations, and future prospects could be materially and adversely affected. In that event, the market price of our common stock could decline, and you could lose part or all of your investment.

Risks Related to Our Financial Condition and Capital Requirements

We are subject to the risks associated with new businesses.

We entered into a license agreement with Toray in October 2020 and are effectively a new business with a plan to commercialize our licensed technology. Our limited operating history may not be adequate to enable you to fully assess our ability to develop and market our Symphony platform and test cartridges, assuming we receive regulatory clearances for which there is no assurance, and respond to competition. Our efforts to date have related to the organization and formation of our company, research and development and preparation for commencing regulatory trials. We have no approved products, have not yet generated revenue, and we cannot guarantee we will ever be able to generate revenues. Therefore, we are, and expect for the foreseeable future to be, subject to all the risks and uncertainties, inherent in a new business focused on the development and sale of new medical devices. As a result, we may be unable to further develop, obtain regulatory approval for, manufacture, market, sell and derive revenues from our Symphony platform and test cartridges and the other product candidates in our pipeline, and our inability to do so would materially and adversely impact our viability. In addition, we still must optimize many functions necessary to operate a business, including expanding our managerial, personnel and administrative structure, continuing product research and development, and assessing and commencing our marketing activities.

Accordingly, you should consider our prospects in light of the costs, uncertainties, delays and difficulties frequently encountered by companies that have not yet commercialized their products, particularly those in the medical device field. In particular, potential investors should consider that there is a significant risk that we will not be able to:

- implement or execute our current business plan, or that our business plan is sound;
- maintain our management team and Board of Directors;
- determine that the technologies that have been developed are commercially viable;
- attract, enter into or maintain contracts with, and retain customers; and
- raise any necessary additional funds in the capital markets or otherwise to effectuate our business plan.

In the event that we do not successfully address these risks, our business, prospects, financial condition, and results of operations could be materially and adversely affected.

We have incurred significant losses since inception and may not be able to achieve significant revenues or profitability.

Since our inception, we have engaged primarily in development activities. We have financed our operations primarily through financing from private capital raising, and have incurred losses since inception, including a net loss of $1.2 million for the fiscal year ended December 31, 2020 and a net loss of $834,421 for the six months ended June 30, 2021. We do not know whether or when we will become profitable. Our ability to generate revenue and achieve profitability depends upon our ability, alone or with others, to complete the development process of our product candidates, including regulatory approvals, and thereafter achieve substantial acceptance in the marketplace for our products. We may be unable to achieve any or all of these goals.

Our losses from operations could continue to raise substantial doubt regarding our ability to continue as a going concern. Our ability to continue as a going concern requires that we obtain sufficient funding to finance our operations.

We had cash and cash equivalents of approximately $1.9 million at October 20, 2021. We estimate that our existing cash resources, without giving effect to the proceeds from this offering, will not be sufficient to fund operations into 2022. Our financial statements included with this prospectus have been prepared assuming that we will continue as a going concern. We have concluded that substantial doubt about our ability to continue as a going concern exists and our auditors have made reference to this in their audit report on our audited financial statements for the year ended December 31, 2020. If we are unable to obtain sufficient funding, we could be forced to delay the commercialization of our product candidates, and our financial condition and results of operations will be materially and adversely affected. After the completion of this offering, future financial statements may continue to disclose substantial doubt about our ability to continue as a going concern. If we seek additional financing to fund our business activities in the future and there remains substantial doubt about our ability to continue as a going concern, investors or other financing sources may be unwilling to provide additional funding to us on commercially reasonable terms or at all.

We will require substantial additional funding, which may not be available to us on acceptable terms, or at all, and, if not so available, may require us to delay, limit, reduce or cease our operations.

To date, we have relied primarily on private debt and equity financing to carry on our business. We have limited financial resources, negative cash flow from operations and no assurance that sufficient funding will be available to us to fund our operating expenses and to further our product development efforts and pursue clinical trials for FDA approval. We expect the net proceeds from this offering, along with our current cash position, will enable us to fund our operating expenses and capital expenditure requirements for at least the next twelve months. Thereafter, unless we achieve profitability, we anticipate that we will need to raise additional capital to fund our operations while we implement and execute our business plan. We currently do not have any contracts or commitments for additional financing. In addition, any additional equity financing may involve substantial dilution to our existing shareholders. There can be no assurance that such additional capital will be available on a timely basis or on terms that will be acceptable to us. Failure to obtain such additional financing could result in delay or indefinite postponement of operations or the further development of our business with the possible loss of such properties or assets. If adequate funds are not available or are not available on acceptable terms, we may not be able to fund our business or the expansion thereof, take advantage of strategic acquisitions or investment opportunities or respond to competitive pressures. Such inability to obtain additional financing when needed could have a material adverse effect on our business, results of operations, cash flow, financial condition and prospects.

Risks Related to Our Business

The license agreement with Toray, which covers the license of the core technology used in our Symphony platform and test cartridge product candidates, contains significant risks that may threaten our viability or otherwise have a material adverse effect on us and our business, assets and its prospects.

We have an exclusive license with Toray for the entire world, excluding Japan, to use their patents and know-how related to our Symphony platform and test cartridges for the manufacturing, marketing and sale of such products. We also have a nonexclusive license for the same purposes in Japan. We have no contractual rights to the intellectual property covered in the license agreement other than as expressly set forth therein. Our plans, business, prospects and viability are substantially dependent on that intellectual property and subject to the limitations relating thereto as set forth in the license agreement:

- After the receipt of regulatory approval in a country, we are required to pay Toray a minimum royalty of $60,000 for the initial year that royalties are payable increasing to a minimum of $100,000 thereafter, regardless of the actual amount of sales by us of licensed products. Accordingly, we could be obligated to pay royalties even though we have generated no or limited revenue. Such payments could materially and adversely affect our profitability and could limit our investment in our business.

- For a period of three years, we are required to purchase test cartridges from Toray. Accordingly, we will not have unfettered right to select our suppliers, regardless of whether an unauthorized supplier could provide products on better pricing, delivery, quality or other terms, thus potentially materially and adversely impacting those aspects of our business, economies, profitability and prospects.

- The license is non-assignable and non-sublicensable (to third parties). These restrictions may limit our flexibility to structure our operations in the most advantageous manner.
- At our sole expense, we must file for, prosecute the application for, and obtain all regulatory approvals for the licensed products and obtain all legal permits necessary for promoting, marketing, offering or selling each licensed product. The regulatory approval process can be expensive and time consuming, and there can be no assurances that we will be able to obtain or maintain any or all required permits.
- We are required to obtain market approval for the products in the United States and the European Union by October 2023 or the license agreement could be terminated by Toray.
- If we do not generate commercial sales within five years of the date of the license, Toray has the right to terminate the agreement or make it non-exclusive.
- Except with respect to Toray's ownership of all intellectual property rights in respect of the licensed property, Toray provides no, and disclaims all, representations, warranties or covenants relating to the licensed intellectual property or any other matters under the license agreement and in particular disclaims any fitness of the property for any purpose or any warranty against infringement of any third party patent. These provisions limit our recourse in the event that the licensed intellectual property is flawed, defective, inadequate, incomplete, uncommercial, wrongly described or otherwise not useful for our purposes. We have not independently verified any of the technical, scientific, commercial, legal, medical or other circumstances or nature of the licensed intellectual property and therefore there can be no assurances that any of the foregoing risks have been reduced or eliminated. These provisions represent a significant risk of a material adverse impact on us, our business and our prospects.

In addition, see the risks in "— *Risks Related to Our Intellectual Property*" below. These risks are not the only risks inherent in the license agreement. You are encouraged to read the complete text of the license agreement, which is filed as an exhibit to the registration statement of which this prospectus is a part.

We have not yet launched any products and the ability to do so will depend on the acceptance of our Symphony platform in the healthcare market.

We have not yet launched or received regulatory approvals in any country or territory for our Symphony platform or test cartridges. Even if we receive regulatory approvals, we are faced with the risk that our Symphony platform will not be accepted over competing products and that we will be unable to enter the marketplace or compete effectively. We cannot assure you that our Symphony platform or test cartridges will gain market acceptance. If the market for our future products fails to develop or develops more slowly than expected, or if any of the technology and standards supported by us do not achieve or sustain market acceptance, our business and operating results would be materially and adversely affected.

We cannot accurately predict the volume or timing of any sales, making the timing of any revenues difficult to predict.

We may be faced with lengthy and unpredictable customer evaluation and approval processes associated with our Symphony platform. Consequently, we may incur substantial expenses and devote significant management effort and expense in developing customer adoption of our Symphony platform, which may not result in revenue generation. We must also obtain regulatory approvals of our Symphony platform and test cartridges in jurisdictions in which we pursue approvals, which is subject to risk and potential delays. The same risks apply to other tests we may develop based on our Symphony platform. As such, we cannot accurately predict the volume, if any, or timing of any future sales.

If third-party payors do not provide coverage and reimbursement for the use of our platform, our business and prospects may be negatively impacted.

Third-party payors, whether governmental or commercial, are developing increasingly sophisticated methods of controlling healthcare costs. In addition, in certain countries, no uniform policy of coverage and reimbursement for medical device products and services exists among third-party payors. Therefore, coverage and reimbursement for medical device products and services can differ significantly from payor to payor. In addition, payors continually

review new technologies for possible coverage and can, without notice, deny coverage for these new products and procedures. As a result, the coverage determination process is often a time-consuming and costly process that will require us to provide scientific and clinical support for the use of our products to each payor separately, with no assurance that coverage and adequate reimbursement will be obtained, or maintained if obtained.

Our Symphony platform, including its software and systems, may contain undetected errors, which could limit our ability to provide our products and diminish the attractiveness of our offerings.

Our Symphony platform may contain undetected errors, defects or bugs. As a result, our customers or end users may discover errors or defects in our products, software or systems, or our products, software or systems may not operate as expected. We may discover significant errors or defects in the future that we may not be able to fix. Our inability to fix any of those errors could limit our ability to provide our products and services, impair the reputation of our brand and diminish the attractiveness of our product and service offerings to our customers.

In addition, we may utilize third party technology or components in our products, and we rely on those third parties to provide support services to us. The existence of errors, defects or bugs in third party technology or components, or the failure of those third parties to provide necessary support services to us, could materially adversely impact our business.

We will rely on the proper function, security and availability of our information technology systems and data to operate our business, and a breach, cyber-attack or other disruption to these systems or data could materially and adversely affect our business, results of operations, financial condition, cash flows, reputation or competitive position.

We will depend on sophisticated software and other information technology systems to operate our business, including to process, transmit and store sensitive data, and our future products and services may include information technology systems that collect data regarding patients. We could experience attempted or actual interference with the integrity of, and interruptions in, our technology systems, as well as data breaches, such as cyber-attacks, malicious intrusions, breakdowns, interference with the integrity of our products and data or other significant disruptions. Furthermore, we may rely on third-party vendors to supply and/or support certain aspects of our information technology systems. These third-party systems could also become vulnerable to cyber-attack, malicious intrusions, breakdowns, interference or other significant disruptions, and may contain defects in design or manufacture or other problems that could result in system disruption or compromise the information security of our own systems.

If in the future we pursue foreign jurisdictions, such international operations will mean that we are subject to laws and regulations, including data protection and cybersecurity laws and regulations, in many jurisdictions. Furthermore, there has been a developing trend of civil lawsuits and class actions relating to breaches of consumer data held by large companies or incidents arising from other cyber-attacks. Any data security breaches, cyber-attacks, malicious intrusions or significant disruptions could result in actions by regulatory bodies and/or civil litigation, any of which could materially and adversely affect our business, results of operations, financial condition, cash flows, reputation or competitive position.

In addition, our information technology systems require an ongoing commitment of significant resources to maintain, protect, and enhance existing systems and develop new systems to keep pace with continuing changes in information processing technology, evolving legal and regulatory standards, the increasing need to protect patient and customer information, changes in the techniques used to obtain unauthorized access to data and information systems, and the information technology needs associated any new products and services. There can be no assurance that our process of consolidating, protecting, upgrading and expanding our systems and capabilities, continuing to build security into the design of our products, and developing new systems to keep pace with continuing changes in information processing technology will be successful or that additional systems issues will not arise in the future.

If our information technology systems, products or services or sensitive data are compromised, patients or employees could be exposed to financial or medical identity theft or suffer a loss of product functionality, and we could lose existing customers, have difficulty attracting new customers, have difficulty preventing, detecting, and controlling fraud, be exposed to the loss or misuse of confidential information, have disputes with customers, physicians, and other health care professionals, suffer regulatory sanctions or penalties, experience increases in operating expenses or

an impairment in our ability to conduct our operations, incur expenses or lose revenues as a result of a data privacy breach, product failure, information technology outages or disruptions, or suffer other adverse consequences including lawsuits or other legal action and damage to our reputation.

Our future performance will depend on the continued engagement of key members of our management team.

Our future performance depends to a large extent on the continued services of members of our current management. In the event that we lose the continued services of such key personnel for any reason, this could have a material adverse effect on our business, operations and prospects.

If we are not able to attract and retain highly skilled managerial, scientific and technical personnel, we may not be able to implement our business model successfully.

We believe that our management team must be able to act decisively to apply and adapt our business model in the markets in which we will compete. In addition, we will rely upon technical and scientific employees or third-party contractors to effectively establish, manage and grow our business. Consequently, we believe that our future viability will depend largely on our ability to attract and retain highly skilled managerial, sales, scientific and technical personnel. In order to do so, we may need to pay higher compensation or fees to our employees or consultants than we currently expect, and such higher compensation payments would have a negative effect on our operating results. Competition for experienced, high-quality personnel is intense and we cannot assure that we will be able to recruit and retain such personnel. We may not be able to hire or retain the necessary personnel to implement our business strategy. Our failure to hire and retain such personnel could impair our ability to develop new products and manage our business effectively.

If we or our manufacturers fail to comply with the regulatory quality system regulations or any applicable equivalent regulations, our proposed operations could be interrupted, and our operating results would suffer.

We and any third-party manufacturers and suppliers of ours will be required, to the extent of applicable regulation, to follow the quality system regulations of each jurisdiction we will seek to penetrate and also will be subject to the regulations of these jurisdictions regarding the manufacturing processes. If we or any third-party manufacturers or suppliers of ours are found to be in significant non-compliance or fail to take satisfactory corrective action in response to adverse regulatory findings in this regard, regulatory agencies could take enforcement actions against us and such manufacturers or suppliers, which could impair or prevent our ability to produce our products in a cost-effective and timely manner in order to meet customers' demands. Accordingly, our operating results would suffer.

Product liability suits, whether or not meritorious, could be brought against us due to an alleged defective product or for the misuse of our Symphony platform or test cartridges. These suits could result in expensive and time-consuming litigation, payment of substantial damages, and an increase in our insurance rates.

If our Symphony platform or test cartridges, or any future tests based on our Symphony platform, are defectively designed or manufactured, contain defective components or are misused, or if someone claims any of the foregoing, whether or not meritorious, we may become subject to substantial and costly litigation. Misusing our devices or failing to adhere to the operating guidelines or our devices producing inaccurate readings could cause significant harm to patients. In addition, if our operating guidelines are found to be inadequate, we may be subject to liability. Product liability claims could divert management's attention from our core business, be expensive to defend and result in sizable damage awards against us. While we expect to maintain product liability insurance, we may not have sufficient insurance coverage for all future claims. Any product liability claims brought against us, with or without merit, could increase our product liability insurance rates or prevent us from securing continuing coverage, could harm our reputation in the industry and could reduce revenue. Product liability claims in excess of our insurance coverage would be paid out of cash reserves harming our financial condition and adversely affecting our results of operations.

If we are found to have violated laws protecting the confidentiality of patient health information, we could be subject to civil or criminal penalties, which could increase our liabilities and harm our reputation or our business.

There are a number of laws around the world protecting the confidentiality of certain patient health information, including patient records, and restricting the use and disclosure of that protected information. Privacy rules protect medical records and other personal health information by limiting their use and disclosure, giving individuals the

right to access, amend and seek accounting of their own health information and limiting most use and disclosures of health information to the minimum amount reasonably necessary to accomplish the intended purpose. We may face difficulties in holding such information in compliance with applicable law. If we are found to be in violation of the privacy rules, we could be subject to civil or criminal penalties, which could increase our liabilities, harm our reputation and have a material adverse effect on our business, financial condition and results of operations.

Risks Related to Product Development and Regulatory Approval

The regulatory approval process which we may be required to navigate may be expensive, time-consuming, and uncertain and may prevent us from obtaining clearance for our planned products.

We intend to market our Symphony platform or test cartridges following regulatory approval. To date, we have not received regulatory approval in any jurisdiction. The research, design, testing, manufacturing, labeling, selling, marketing and distribution of medical devices are subject to extensive regulation by country-specific regulatory authorities, which regulations differ from country to country. There can be no assurance that, even after such time and expenditures, we will be able to obtain necessary regulatory approvals for clinical testing or for the manufacturing or marketing of any products. In addition, during the regulatory process, other companies may develop other technologies with the same intended use as our products.

We also will be subject to numerous post-marketing regulatory requirements, which may include labeling regulations and medical device reporting regulations, which may require us to report to different regulatory agencies if our device causes or contributes to a death or serious injury, or malfunctions in a way that would likely cause or contribute to a death or serious injury. In addition, these regulatory requirements may change in the future in a way that adversely affects us. If we fail to comply with present or future regulatory requirements that are applicable to us, we may be subject to enforcement action by regulatory agencies, which may include, among others, any of the following sanctions:

- warning letters, fines, injunctions, consent decrees and civil penalties;
- customer notification, or orders for repair, replacement or refunds;
- voluntary or mandatory recall or seizure of our products;
- imposing operating restrictions, suspension or shutdown of production;
- refusing our requests for clearance or pre-market approval of new products, new intended uses or modifications to any products;
- rescinding clearance or suspending or withdrawing pre-market approvals that have already been granted; and
- criminal prosecution.

The occurrence of any of these events may have a material adverse effect on our business, financial condition and results of operations.

Clinical data obtained in the future may not meet the required objectives, which could delay, limit or prevent any regulatory approval.

There can be no assurance that we will successfully complete any clinical evaluations necessary to receive regulatory approvals. While preliminary results have been encouraging and indicative of the potential performance of our Symphony platform and test cartridges, data already obtained, or in the future obtained, from clinical studies do not necessarily predict the results that will be obtained from later clinical evaluations. The failure to adequately demonstrate the performance characteristics of the device under development could delay or prevent regulatory approval of the device, which could prevent or result in delays to market launch and could materially harm our business. There can be no assurance that we will be able to receive approval for any potential applications of our principal technology, or that we will receive regulatory clearances from targeted regions or countries.

We may be unable to complete required clinical evaluations, or we may experience significant delays in completing such clinical evaluations, which could prevent or significantly delay our targeted product launch timeframe and impair our viability and business plan.

The completion of any future clinical evaluations of our Symphony platform or test cartridges, or other studies that we may be required to undertake in the future, could be delayed, suspended or terminated for several reasons, including:

- we may fail to or be unable to conduct the clinical evaluation in accordance with regulatory requirements;
- sites participating in the trial may drop out of the trial, which may require us to engage new sites for an expansion of the number of sites that are permitted to be involved in the trial;
- patients may not enroll in, remain in or complete, the clinical evaluation at the rates we expect; and
- clinical investigators may not perform our clinical evaluation on our anticipated schedule or consistent with the clinical evaluation protocol and good clinical practices.

If our clinical evaluations are delayed it will take us longer to ultimately launch our Symphony platform and test cartridges in the market and generate revenues. Moreover, our development costs will increase if we have material delays in our clinical evaluation or if we need to perform more or larger clinical evaluations than planned.

Risks Related to Our Intellectual Property

We depend on intellectual property licensed from Toray, and any dispute over the license would significantly harm our business.

We are dependent on the intellectual property licensed from Toray. Disputes may arise between us and Toray regarding intellectual property subject to the license agreement. If disputes over intellectual property that we have licensed prevent or impair our ability to maintain our current licensing arrangements on acceptable terms, or are insufficient to provide us the necessary rights to use the intellectual property, we may be unable to successfully develop and launch our Symphony platform and our other product candidates. If we or Toray fail to adequately protect this intellectual property, our ability to launch our products in the market also could suffer. For so long as we are dependent on the intellectual property covered by the license agreement for the pursuit of our business, any such disputes relating to the license agreement or failure to protect the intellectual property could threaten our viability.

We will depend primarily on Toray to file, prosecute, maintain, defend and enforce intellectual property that we license from it and that is material to our business.

The intellectual property relating to our Symphony platform is owned by Toray. Under the license agreement, Toray generally has the right to file, prosecute, maintain and defend the intellectual property we have licensed from Toray. If Toray fails to conduct these activities for intellectual property protection covering any of our product candidates, our ability to develop and launch those product candidates may be adversely affected and we may not be able to prevent competitors from making, using or selling competing products. In addition, pursuant to the terms of the license agreement, Toray generally has the right to control the enforcement of our licensed intellectual property and the defense of any claims asserting the invalidity of that intellectual property. We cannot be certain that Toray will allocate sufficient resources to and otherwise prioritize the enforcement of such intellectual property or the defense of such claims to protect our interests in the licensed intellectual property. In the absence of action by Toray, we may be unable to protect and enforce the proprietary rights on which our business relies. Even if we are not a party to these legal actions, an adverse outcome could harm our business because it might prevent us from continuing to use the licensed intellectual property that we need to operate our business. In addition, even if we take control of the prosecution of licensed intellectual property and related applications, enforcement of licensed intellectual property, or defense of claims asserting the invalidity of that intellectual property, we may still be adversely affected or prejudiced by actions or inactions of Toray and its counsel that took place prior to or after our assuming control, and we cannot ensure the cooperation of Toray in any such action. Furthermore, if we take action to protect, enforce or defend the licensed intellectual property, we may incur significant costs and the attention of our management may be diverted from our normal business operations. As a result, our business, results of operations and financial condition could be materially and adversely affected.

We and Toray may be unable to protect or enforce the intellectual property rights licensed to us, which could impair our competitive position.

In order for our business to be viable and to compete effectively, the proprietary rights with respect to the technologies and intellectual property used in our products must be developed and maintained. Toray relies primarily on patent protection and trade secrets to protect its technology and intellectual property rights. There are significant risks associated with Toray's ability (or our ability, in the absence of action by Toray) to protect the intellectual property licensed to us, including:

- pending intellectual property applications may not be approved or may take longer than expected to result in approval in one or more of the countries in which we operate;
- Toray's intellectual property rights may not provide meaningful protection;
- other companies may challenge the validity or extent of Toray's patents and other proprietary intellectual property rights through litigation, oppositions and other proceedings. These proceedings can be protracted as well as unpredictable;
- other companies may have independently developed (or may in the future independently develop) similar or alternative technologies, may duplicate Toray's technologies or may design their technologies around Toray's technologies;
- enforcement of intellectual property rights is complex, uncertain and expensive, and may be subject to lengthy delays. In the event we take control of any such action under the license agreement, our ability to enforce our intellectual property protection could be limited by our financial resources; and
- the other risks described in "— Risks Related to Our Intellectual Property."

If any of Toray's patents or other intellectual property rights fail to protect the technology licensed by us, it would make it easier for our competitors to offer similar products. Any inability on Toray's part (or on our part, in the absence of action by Toray) to adequately protect its intellectual property may have a material adverse effect on our business, financial condition and results of operations.

We and/or Toray may be subject to claims alleging the violation of the intellectual property rights of others.

We may face significant expense and liability as a result of litigation or other proceedings relating to intellectual property rights of others. In the event that another party has intellectual property protection relating to an invention or technology licensed by us from Toray, we and/or Toray may be required to participate in an interference proceeding declared by the regulatory authorities to determine priority of invention, which could result in substantial uncertainties and costs for us, even if the eventual outcome was favorable to us. We and/or Toray also could be required to participate in interference proceedings involving intellectual property of another entity. An adverse outcome in an interference proceeding could require us and/or Toray to cease using the technology, to substantially modify it or to license rights from prevailing third parties, which could delay or prevent the launch of our products in the market or adversely affect our profitability.

The cost to us of any intellectual property litigation or other proceeding relating the intellectual property licensed by us from Toray, even if resolved in our favor, could be substantial, especially given our early stage of development. A third party may claim that we and/or Toray are using inventions claimed by their intellectual property and may go to court to stop us and/or Toray from engaging in our normal operations and activities, such as research, development and the sale of any future products. Such lawsuits are expensive and would consume significant time and other resources. There is a risk that a court will decide that we and/or Toray are infringing the third party's intellectual property and will order us to stop the activities claimed by the intellectual property. In addition, there is a risk that a court will order us and/or Toray to pay the other party damages for having infringed their intellectual property. Moreover, there is no guarantee that any prevailing intellectual property owner would offer us a license so that we could continue to engage in activities claimed by the intellectual property, or that such a license, if made available to us, could be acquired on commercially acceptable terms.

We and Toray may be subject to claims challenging the invention of the intellectual property that we license from Toray.

We and Toray may be subject to claims that former employees, collaborators or other third parties have an interest in intellectual property as an inventor or co-inventor. For example, we and Toray may have inventorship disputes arising from conflicting obligations of consultants or others who are involved in developing our product candidates. Litigation may be necessary to defend against these and other claims challenging inventorship. If we and Toray fail in defending any such claims, in addition to paying monetary damages, we and Toray may lose valuable intellectual property rights, such as exclusive ownership of, or right to use, valuable intellectual property. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management and other employees. As a result, it is unclear whether and, if so, to what extent employees of ours and Toray may be able to claim compensation with respect to our future revenue. We may receive less revenue from future products if any of employees of Toray or us successfully claim compensation for their work in developing our intellectual property, which in turn could impact our future profitability.

Risks Related to Our Industry

We face intense competition in the diagnostic testing market, particularly in the IL-6 space, and as a result we may be unable to effectively compete in our industry.

We expect to compete directly and primarily with large medical device companies. These large companies have most of the diagnostic testing business and strong research and development capacity. Their dominant market position and significant control over markets could significantly limit our ability to introduce our Symphony platform or effectively market and generate sales of our products.

We have not yet entered the revenue stage and most of our competitors have long histories and strong reputations within the industry. They have significantly greater brand recognition, financial and human resources than we do. They also have more experience and capabilities in researching and developing testing devices, obtaining and maintaining regulatory clearances and other requirements, manufacturing and marketing those products than we do. There is a significant risk that we may be unable to overcome the advantages held by our competition, and our inability to do so could lead to the failure of our business.

Competition in the diagnostic testing markets is intense, which can lead to, among other things, price reductions, longer selling cycles, lower product margins, loss of market share and additional working capital requirements. To succeed, we must, among other critical matters, gain consumer acceptance for our products, technical solutions, prices and response time, or a combination of these factors, than those of other competitors. If our competitors offer significant discounts on certain products, we may need to lower our prices or offer other favorable terms in order to compete successfully. Moreover, any broad-based changes to our prices and pricing policies could make it difficult to generate revenues or cause our revenues, if established, to decline. Moreover, if our competitors develop and commercialize products that are more desirable than the products that we may develop, we may not convince customers to use our products. Any such changes would likely reduce our commercial opportunity and revenue potential and could materially adversely impact our operating results.

If we or Toray fail to respond quickly to technological developments, our products may become uncompetitive and obsolete.

The diagnostic testing market may experience rapid technology developments, changes in industry standards, changes in customer requirements and frequent new product introductions and improvements. If we or Toray are unable to respond to these developments, we may lose competitive position, and our products or technology may become uncompetitive or obsolete, causing our business and prospects to suffer. In order to compete, we and Toray may have to develop, license or acquire new technology on a schedule that keeps pace with technological developments and the requirements for products addressing a broad spectrum and designers and designer expertise in our industries.

Risks Related to this Offering and the Ownership of Our Common Stock

We have broad discretion in the use of the net proceeds from this offering and may use the net proceeds in ways with which you may not agree.

Our management will have broad discretion in the application of the net proceeds from this offering and could spend the proceeds in ways that do not advance our business plan, achieve proposed objectives, improve our financial condition, generate revenue or enhance the value of our common stock. You will be relying on the judgment of our management with regard to the use of these net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the net proceeds are being used appropriately. The failure by our management to apply these funds effectively could result in financial losses that could have a material adverse effect on our business, cause the price of our common stock to decline and delay the development of our product candidates. Pending the application of these funds, we may invest the net proceeds from this offering in a manner that does not produce income or that loses value.

We may not be able to satisfy the continued listing requirements of the NASDAQ Global Market in order to maintain the listing of our common stock.

We must meet certain financial and liquidity criteria to maintain the listing of our common stock on the NASDAQ Capital Market. If we fail to meet any of continued listing standards, our common stock may be delisted. In addition, while we have no present intention to do so, our Board of Directors may determine that the cost of maintaining our listing on a national securities exchange outweighs the benefits of such listing. A delisting of our common stock from the NASDAQ Capital Market may have materially adverse consequences to our stockholders, including:

- a reduced market price and liquidity with respect to our shares of common stock;
- limited dissemination of the market price of our common stock;
- limited news coverage;
- limited interest by investors in our common stock;
- volatility of the prices of our common stock, due to low trading volume;
- our common stock being considered a “penny stock,” which would result in broker-dealers participating in sales of our common stock being subject to the regulations set forth in Rules 15g-2 through 15g-9 promulgated under the Exchange Act;
- increased difficulty in selling our common stock in certain states due to “blue sky” restrictions; and
- limited ability to issue additional securities or to secure additional financing.

If our common stock is delisted, we may seek to have our common stock quoted on an over-the-counter marketplace, such as on the OTCQX. The OTCQX is not a stock exchange, and if our common stock trades on the OTCQX rather than a securities exchange, there may be significantly less trading volume and analyst coverage of, and significantly less investor interest in, our common stock, which may lead to lower trading prices for our common stock.

Investors in this offering will experience immediate and substantial dilution in net tangible book value.

The difference between the public offering price per share of our common stock and the pro forma net tangible assets per share of our common stock after this offering constitutes the dilution to the investors in this offering. You will incur immediate and substantial dilution as a result of this offering. After giving effect to the sale by us of all 1,800,000 shares of common stock in this offering at an assumed public offering price of $10.00 per share, investors in this offering can expect an immediate dilution to net tangible assets of $8.44 per share, based on a pro forma net tangible book value per share after the offering of $1.56. This dilution is due in large part to the fact that our existing investors acquired their securities prior to this offering at substantially less than investors are paying in this offering. If any outstanding warrants to purchase shares of our common stock are exercised, there would be further dilution.

If any outstanding warrants to purchase shares of our common stock are exercised, there would be further dilution. In addition, if upon the earlier of (i) 10 trading days from the issuance date of the Class B Warrants or (ii) the time when $10.0 million of volume is traded in our common stock, if the volume weighted average price of our common stock on any trading day on or after the date of issuance fails to exceed the exercise price of the Class B Warrants, the Class B Warrants can be exercised on a "cashless" basis for shares of common stock on a one-for-one basis, regardless of whether the market price of our common stock is above the exercise price, which may result in additional dilution and no additional proceeds to us in connection with such exercises. See "Dilution" for a more complete description of how the value of your investment in our common stock will be diluted upon the completion of this offering.

The market price of our common stock may be significantly volatile.

The market price for our common stock may be significantly volatile and subject to wide fluctuations in response to factors including the following:

- developments prior to commercial sales relating to regulatory approval, manufacturing and distribution of our products;
- actual or anticipated fluctuations in our quarterly or annual operating results;
- changes in financial or operational estimates or projections;
- conditions in markets generally;
- changes in the economic performance or market valuations of companies similar to ours; and
- general economic or political conditions in the United States or elsewhere.

In particular, the market prices for securities of medical device companies have historically been particularly volatile. Some of the factors that may cause the market price of our common stock to fluctuate include:

- any delay in or the results of our clinical evaluations;
- any delay in manufacturing of our products;
- any delay with the approval for reimbursement for the patients from their insurance companies;
- our failure to comply with regulatory requirements;
- the announcements of clinical evaluation data, and the investment community's perception of and reaction to those data;
- the results of clinical evaluations conducted by others on products that would compete with ours;
- any delay or failure to receive clearance or approval from regulatory agencies or bodies;
- our inability to commercially launch products or market and generate sales of our products;
- failure of our products, even if approved for marketing, to achieve any level of commercial success;
- our failure to obtain intellectual property protection for any of our technologies and products or the issuance of third-party intellectual property that cover our proposed technologies or products;
- developments or disputes concerning our future products intellectual property rights;
- our or our competitors' technological innovations;
- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, joint ventures, capital commitments, new technologies, or intellectual property;
- failure to adequately manufacture our products through third parties;

- future sales of our common stock or other securities, including shares issuable upon the exercise of outstanding warrants or otherwise issued pursuant to certain contractual rights;
- period-to-period fluctuations in our financial results; and
- low or high trading volume of our common stock due to many factors, including the terms of our financing arrangements.

In addition, if we fail to reach an important research, development or commercialization milestone or result by a publicly expected deadline, even if by only a small margin, there could be significant impact on the market price of our common stock. Additionally, as we approach the announcement of anticipated significant information and as we announce such information, we expect the price of our common stock to be volatile and negative results would have a substantial negative impact on the price of our common stock.

In some cases, following periods of volatility in the market price of a company's securities, stockholders have often instituted class action securities litigation against those companies. Such litigation, if instituted, could result in substantial costs and diversion of management attention and resources, which could significantly harm our business operations and reputation.

The Class A Warrants may not have value.

The Class A Warrants being offered by us in this offering have an exercise price per share equal to 50% of the unit price and will expire five years from the date of issuance. In the event that our common stock does not exceed the exercise price of the Class A Warrants during the period when such warrants are exercisable, such Class A Warrants may not have any value.

Holders of our warrants will have no rights as shareholders until they acquire shares of our common stock, if ever.

If you acquire the warrants to purchase shares of our common stock in this offering, you will have no rights with respect to our common stock until you acquire shares of such common stock upon exercise of your warrants. Upon exercise of your warrants, you will be entitled to exercise the rights of a holder of common stock only as to matters for which the record date occurs after the exercise date.

There is no public market for either of the warrants being offered by us in this offering and an active trading market for the same is not expected to develop.

There is no established public trading market for either of the warrants being offered in this offering, and we do not expect a market to develop. In addition, we do not intend to apply for any listing of either of the warrants offered hereby on the Nasdaq Capital Market or any other securities exchange or nationally recognized trading system. Without an active market, the liquidity of the warrants will be severely limited.

We could issue "blank check" preferred stock without stockholder approval with the effect of diluting interests of then-current stockholders and impairing their voting rights, and provisions in our charter documents and under Delaware law could discourage a takeover that stockholders may consider favorable.

Our Certificate of Incorporation provides for the authorization to issue up to 5,000,000 shares of "blank check" preferred stock with designations, rights and preferences as may be determined from time to time by our board of directors. Our board of directors is empowered, without stockholder approval, to issue one or more series of preferred stock with dividend, liquidation, conversion, voting or other rights which could dilute the interest of, or impair the voting power of, our common stockholders. The issuance of a series of preferred stock could be used as a method of discouraging, delaying or preventing a change in control. For example, it would be possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of our company. In addition, advanced notice is required prior to stockholder proposals, which might further delay a change of control.

If you purchase Preferred Stock in lieu of common stock in this offering, as a holder of Preferred Stock, you will have no rights as a common stockholder with respect to the shares of common stock underlying the Preferred Stock until you acquire our common stock.

If you purchase Preferred Stock in lieu of common stock in this offering, until you acquire our common stock upon conversion of your Preferred Stock, you will have no rights with respect to the common stock underlying the Preferred Stock. Upon conversion of your Preferred Stock, you will be entitled to exercise the rights of a common stockholder only as to matters for which the record date for actions to be taken by our common stockholders occurs after the date you convert your Preferred Stock.

Our Preferred Stock will rank junior to all our liabilities to third party creditors, and to any class or series of our capital stock created after this offering specifically ranking by its terms senior to the Preferred Stock, in the event of a bankruptcy, liquidation or winding up of our assets.

In the event of bankruptcy, liquidation or winding up, our assets will be available to pay obligations on our Preferred Stock only after all our liabilities have been paid. Our Preferred Stock will effectively rank junior to all existing and future liabilities held by third party creditors. The terms of our Preferred Stock do not restrict our ability to raise additional capital in the future through the issuance of debt. Our Preferred Stock will also rank junior to any class or series of our capital stock created after this offering specifically ranking by its terms senior to the Preferred Stock. In the event of bankruptcy, liquidation or winding up, there may not be sufficient assets remaining, after paying our liabilities, to pay amounts due on any or all of our Preferred Stock then outstanding.

Shares eligible for future sale may adversely affect the market for our common stock.

The price of our common stock could decline if there are substantial sales of our common stock, particularly sales by our directors, executive officers, employees, and significant stockholders, or when there is a large number of shares of our common stock available for sale.

Our directors, officers and certain existing stockholders will enter into lock-up agreements pursuant to which, subject to certain exceptions, such persons will not sell 9,812,735 shares of our common stock (including common stock underlying options and warrants) that they own for six months after the date of this prospectus, as further described in "*Underwriting*." Notwithstanding the foregoing, the lock-up provisions in these agreements may be waived, at any time and without notice by the representative.

Subject to the lock-up agreements, our existing stockholders (including the holders of our preferred stock and warrants) may be eligible to sell all or some of their shares of common stock by means of ordinary brokerage transactions in the open market, subject to the limitations of Rule 144, promulgated under the Securities Act of 1933, as amended, or the "*Securities Act*." In general, under Rule 144 as currently in effect, once we have been subject to public company reporting requirements for at least 90 days, a person who is not deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates, is entitled to sell those shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then that person is entitled to sell those shares without complying with any of the requirements of Rule 144. Our affiliates and other persons selling shares on behalf of our affiliates also are entitled to sell as long as they comply with Rule 144's manner of sale, volume limitation and notice provisions, in addition to the provisions applicable to non-affiliates described above.

The market price of the shares of our common stock could decline as a result of the sale of a substantial number of our shares of common stock in the public market or the perception in the market that the holders of a large number of shares intend to sell their shares.

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

We do not anticipate paying any cash dividends to holders of our common stock in the foreseeable future. Consequently, investors must rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments. There is no guarantee that shares of our common stock will appreciate in value or even maintain the price at which our stockholders have purchased their shares.

The determination of the offering price for the shares is more arbitrary compared with the pricing of securities for an established operating company.

There is no direct relationship between the offering price and our assets, book value, net worth, or any other economic or financial criteria. Rather, the price of the shares was derived through negotiations with the underwriters after considering various factors including prevailing market conditions, our future prospects and our capital structure. Although these factors were considered, the determination of the offering price is more arbitrary than the pricing of securities for an established operating company. This price does not necessarily accurately reflect the actual value of the shares or the price that may be realized upon disposition of the shares.

If securities industry analysts do not publish research reports on us, or publish unfavorable reports on us, then the market price and market trading volume of our common stock could be negatively affected.

Any trading market for our common stock will be influenced in part by any research reports that securities industry analysts publish about us. We do not currently have and may never obtain research coverage by securities industry analysts. If no securities industry analysts commence coverage of us, the market price and market trading volume of our common stock could be negatively affected. In the event we are covered by analysts, and one or more of such analysts downgrade our securities, or otherwise reports on us unfavorably, or discontinues coverage or us, the market price and market trading volume of our common stock could be negatively affected.

As an "emerging growth company" under applicable law, we will be subject to lessened disclosure requirements, which could leave our stockholders without information or rights available to stockholders of other public companies that are not "emerging growth companies."

For as long as we remain an "emerging growth company" as defined in the JOBS Act, we have elected to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not "emerging growth companies" including, but not limited to:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act;
- reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We expect to take advantage of these reporting exemptions until we are no longer an "emerging growth company". We could be an emerging growth company for up to five years, although circumstances could cause us to lose that status earlier. We will remain an emerging growth company until the earlier of (1) the last day of the fiscal year following the fifth anniversary of the completion of this offering, (2) the last day of the fiscal year in which we have total annual gross revenue of at least $1.07 billion, (3) the date on which we are deemed to be a large accelerated filer, which is the end of the fiscal year in which the market value of our common stock that is held by non-affiliates exceeds $700.0 million as of the end of our most recent second fiscal quarter, and (4) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

Because of these lessened regulatory requirements, our stockholders would be left without information or rights available to stockholders of other public companies that are not "emerging growth companies." In addition, we cannot predict if investors will find our common stock less attractive because we rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may suffer or be more volatile.

Because we have elected to use the extended transition period for complying with new or revised accounting standards for an "emerging growth company" our financial statements may not be comparable to companies that comply with public company effective dates.

We have elected to use the extended transition period for complying with new or revised accounting standards under Section 102(b)(1) of the JOBS Act. This election allows us to delay the adoption of new or revised accounting standards that have different effective dates for public and private companies until those standards apply to private companies. While we are not currently delaying the implementation of any relevant accounting standards, in the future we may avail ourselves of these rights, and as a result of this election, our financial statements may not be comparable to companies that comply with public company effective dates. Because our financial statements may not be comparable to companies that comply with public company effective dates, investors may have difficulty evaluating or comparing our business, performance or prospects in comparison to other public companies, which may have a negative impact on the value and liquidity of our common stock.

Anti-takeover provisions in our charter documents and Delaware law could discourage, delay or prevent a change in control of our company and may affect the trading price of our common stock.

We are a Delaware corporation and the anti-takeover provisions of the Delaware General Corporation Law may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, even if a change in control would be beneficial to our existing stockholders. In addition, our amended and restated certificate of incorporation and by-laws may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable. Our amended and restated certificate of incorporation and bylaws will:

- provide for the issuance of "blank check" preferred stock that could be issued by our Board of Directors to thwart a takeover attempt;
- provide that stockholders will not be able to take action by written consent, and special meetings of stockholders may only be called by our Chief Executive Officer, our President, our Board of Directors or a majority of our stockholders;
- provide that our stockholders are required to provide advance notice and additional disclosures in order to nominate individuals for election to our Board of Directors or to propose matters that can be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company; and
- do not provide stockholders with the ability to cumulate their votes, which limits the ability of minority stockholders to elect director candidates.

These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock, thereby depressing the market price of our common stock.

As a result of becoming a public company, we will be obligated to develop and maintain a system of effective internal control over financial reporting. We may not complete our analysis of our internal control over financial reporting in a timely manner, or these internal controls may not be determined to be effective, which may harm investor confidence in our company and, as a result, the value of our common stock.

We will be required, pursuant to Section 404 of the Sarbanes-Oxley Act, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting in the second annual report we file with the SEC. This assessment will need to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. However, our auditors will not be required to formally attest to the effectiveness of our internal control over financial reporting pursuant to Section 404 until we are no longer an "emerging growth company" as defined in the JOBS Act, if we take advantage of the exemptions available to us through the JOBS Act. Even after we cease to be an "emerging growth company," our auditors will not be required to formally attest to the effectiveness of our internal control over financial reporting unless we are an accelerated filer or a large accelerated filer (as defined under the Exchange Act).

We are in the very early stages of the costly and challenging process of compiling the system and process documentation necessary to perform the evaluation needed to comply with Section 404. In this regard, we will need to continue to dedicate internal resources, engage outside consultants and adopt a detailed work plan to assess and document the adequacy of internal control over financial reporting, continue steps to improve control processes as appropriate, validate through testing that controls are functioning as documented and implement a continuous reporting and improvement process for internal control over financial reporting. As we transition to the requirements of reporting as a public company, we may need to add additional finance staff. We may not be able to complete our evaluation and testing in a timely fashion. During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal controls are effective. We may not be able to remediate any material weaknesses in a timely fashion. If we are unable to complete our evaluation and testing, or if we are unable to assert that our internal control over financial reporting is effective, particularly if we have been unable to remediate any material weaknesses identified, or if or our auditors, when required to do so, are unable to express an opinion that our internal controls are effective, investors could lose confidence in the accuracy and completeness of our financial reports, which could harm our stock price.

We will incur increased costs as a result of operating as a public company and our management will be required to devote substantial time to new compliance initiatives and corporate governance practices. Moreover, our ability to comply with all applicable laws, rules and regulations is uncertain given our management's relative inexperience with operating United States public companies.

As a public company, and particularly after we are no longer an "emerging growth company," we will incur significant legal, accounting and other expenses that we did not incur as a private company. The Sarbanes-Oxley Act, the listing requirements of the NASDAQ Market and other applicable securities rules and regulations impose various requirements on public companies. Our management and other personnel will need to devote a substantial amount of time to compliance with these requirements. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, we expect that these rules and regulations may make it more difficult and more expensive for us to obtain directors' and officers' liability insurance, which could make it more difficult for us to attract and retain qualified members of our board of directors. Furthermore, new or changing laws, regulations and standards are subject to varying interpretations in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We cannot predict or estimate the amount of additional costs we will incur as a public company or the timing of such costs.

Moreover, our executive officers have little experience in operating a United States public company, which makes our ability to comply with applicable laws, rules and regulations uncertain. Our failure to company with all laws, rules and regulations applicable to United States public companies could subject us or our management to regulatory scrutiny or sanction, which could harm our reputation and stock price.

Our amended and restated certificate of incorporation will provide, subject to limited exceptions, that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for certain stockholder litigation matters, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or stockholders.

Our amended and restated certificate of incorporation will require, to the fullest extent permitted by law, subject to limited exceptions, that derivative actions brought in our name, actions against directors, officers and employees for breach of fiduciary duty and other similar actions may be brought only in the Court of Chancery in the State of Delaware and, if brought outside of Delaware, the stockholder bringing the suit will be deemed to have consented to service of process on such stockholder's counsel in any action brought to enforce the exclusive forum provision. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our amended and restated certificate of incorporation.

Notwithstanding the foregoing, Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. In addition, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. As a result, the exclusive forum provision will provide that the Court of Chancery and the federal district court for the District of Delaware will have

concurrent jurisdiction over any action arising under the Securities Act or the rules and regulations thereunder, and the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder or any other claim for which the federal courts have exclusive jurisdiction. To the extent the exclusive forum provision restricts the courts in which our stockholders may bring claims arising under the Securities Act and the rules and regulations thereunder, there is uncertainty as to whether a court would enforce such provision. Investors cannot waive compliance with the federal securities laws and the rules and regulations promulgated thereunder.

This exclusive forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, other employees or stockholders, which may discourage lawsuits with respect to such claims. By requiring a stockholder to bring such a claim in the Court of Chancery (or the federal district court for the District of Delaware, in the case of an action under the Securities Act or the rules and regulations thereunder), the exclusive forum provision also may increase the costs to a stockholder of bringing such a claim. Alternatively, if a court were to find the exclusive forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results and financial condition.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

All statements other than statements of historical fact or relating to present facts or current conditions included in this prospectus are forward-looking statements. Forward-looking statements include, but are not limited to, statements regarding expectations, hopes, beliefs, intentions or strategies regarding the future. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. These statements may include words such as “anticipate,” “estimate,” “expect,” “project,” “plan,” “intend,” “believe,” “may,” “should,” “can have,” “likely” and other words and terms of similar meaning, but the absence of these words does not mean that a statement is not forward-looking.

The forward-looking statements contained in this prospectus are based on our current expectations and beliefs concerning future developments and their potential effects on us. These forward-looking statements are subject to a number of risks, uncertainties and assumptions, including those described in “*Risk Factors*.” Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. In light of these risks, uncertainties and assumptions, the future events and trends discussed in this prospectus may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements.

You should not rely upon forward-looking statements as predictions of future events. The events and circumstances reflected in the forward-looking statements may not be achieved or occur. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance, or achievements. Except as required by the federal securities laws, we are under no duty to update any of these forward-looking statements after the date of this prospectus or to conform these statements to actual results or revised expectations.

USE OF PROCEEDS

We estimate that the net proceeds from the sale of our securities in this offering will be approximately $15.57 million (or $18.06 million if the underwriters exercise the over-allotment option in full), based on an assumed public offering price of $10.00 per Unit, and after deducting the underwriting discounts and estimated offering expenses payable by us. We will not receive any proceeds from the exercise of the Class A Warrants or the Class B Warrants unless such warrants are exercised for cash. We intend to use the net proceeds from the offering as follows:

- approximately $6.5 million to obtain our initial 510(k) regulatory approval in the United States for our sepsis product candidate, including completing any product development required to meet regulatory requirements and establishing relationships with manufacturing facilities with sufficient capacity for clinical evaluation and commercial scale production of the biosensor architecture;
- approximately $3.5 million to market the Sepsis test and Symphony system and establish a distribution network across the United States; and
- the remainder for working capital and general corporate purposes.

We expect the net proceeds to be sufficient to enable us to obtain regulatory approvals, including completing the related product development and establishing the related manufacturing facilities, as well as to market the Sepsis Test for Symphony and establish a distribution network.

This expected use of the net proceeds from this offering represents our intentions based upon our current plans and prevailing business conditions, which could change in the future as our plans and prevailing business conditions evolve. Predicting the cost necessary to develop medical devices can be difficult and the amounts and timing of our actual expenditures may vary significantly depending on numerous factors, including the progress of our development, the status of and results from clinical evaluations, any collaborations that we may enter into with third parties and any unforeseen cash needs. As a result, our management will retain broad discretion over the allocation of the net proceeds from this offering.

Pending the use of the net proceeds of this offering, we intend to invest the net proceeds in short-term investment-grade, interest-bearing securities.

We believe that the net proceeds from this offering will allow us to operate for at least the next 12 months. In addition, available resources may be consumed more rapidly than currently anticipated, and there can be no assurance that we will be successful in developing our planned products and generating sufficient revenue in the timeframe set forth above, or at all. We may be unable to meet our targets for regulatory approval and market launch, or we may be unable to generate anticipated amounts of revenue from sales of the system. We may also need additional funding for developing new products and services and for additional sales, marketing and promotional activities. Should this occur, we may need to seek additional capital earlier than anticipated. In the event we require additional capital, there can be no assurances that we will be able to raise such capital on acceptable terms, or at all. See "*Management's Discussion and Analysis of Financial Condition and Results of Operations*."

DIVIDEND POLICY

Since our inception, we have not paid any dividends on our common stock, and we currently expect that, for the foreseeable future, all earnings (if any) will be retained for the development of our business and no dividends will be declared or paid. In the future, our Board of Directors may decide, at their discretion, whether dividends may be declared and paid, taking into consideration, among other things, our earnings (if any), operating results, financial condition and capital requirements, general business conditions and other pertinent facts, including restrictions imposed by foreign jurisdictions on paying dividends or making other payments to us.

DILUTION

The difference between the public offering price per share of our common stock and our pro forma as adjusted net tangible book value per share after this offering constitutes the dilution to investors in this offering. Net tangible book value per share is determined by dividing our net tangible book value, which is our total tangible assets less total liabilities, by the number of outstanding shares of common stock.

At June 30, 2021, our historical net tangible book deficit was approximately $400,000, or approximately $0.04 per share. Our historical net tangible book deficit represents our total tangible assets (total assets less deferred offering costs) less total liabilities and convertible preferred stock, and our historical net tangible book deficit per share is that number divided by the number of shares of common stock outstanding as of June 30, 2021.

At June 30, 2021, our pro forma net tangible book value was approximately $3.6 million, or approximately $0.34 per share after giving effect to the issuance on August 4, 2021 of an additional $1.5 million convertible debentures, after deducting the origination fees and estimated offering expenses payable by us, and the mandatory conversion of the debentures into Series D convertible preferred stock in connection with this offering.

After giving further effect to the sale of all 1,800,000 units (and the shares of common stock thereunder) at an assumed public offering price of $10.00 per Unit, and after deducting the underwriting discounts and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value at June 30, 2021 would have been approximately $19.2 million or $1.56 per share, representing an immediate increase in net tangible book value of $1.22 per share to our existing stockholders and an immediate dilution of $8.44 per share to new investors.

The following table illustrates the dilution to the new investors on a per-share basis:

Assumed public offering price per share		$ 10.00
Historical net tangible book deficit per share before offering	$ (0.04)	
Increase per share attributable to the pro forma adjustments described above	$ 0.38	
Pro forma net tangible book value per share before offering	$ 0.34	
Increase in net tangible book value per share attributable to shares offered hereby	$ 1.22	
Pro forma as adjusted net tangible book value per share after offering		$ 1.56
Dilution in pro forma net tangible book value per share to investors in offering		$ 8.44

If the representative exercises the option to purchase additional shares to cover over-allotments in full, the pro forma as adjusted net tangible book value per share of our common stock after giving effect to this offering would be approximately $1.72 per share, and the dilution in pro forma as adjusted net tangible book value per share to investors in this offering would be approximately $8.28 per share of common stock.

The following table summarizes, as of June 30, 2021, and assuming the sale of all the shares offered hereby, the differences between the number of shares of our common stock purchased from us, the total cash consideration paid, and the average price per share paid by our existing stockholders prior to this offering and by our new investors purchasing shares in this offering at an assumed public offering price of $10.00 per share, before deducting the underwriting discounts and estimated offering expenses payable by us:

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing Stockholders	10,477,880	85.3%	$ 4,598,410	20.3%	$ 0.44
New Investors	1,800,000	14.7%	$ 18,000,000	79.7%	$ 10.00
Total	12,277,880	**100.00%**	$ 22,598,410	**100.00%**	

The dilution information discussed above is illustrative only and may change based on the actual initial public offering price and other terms of this offering. Each $1.00 increase (decrease) in the assumed public offering price of $10.00 per share would increase (decrease) each of the total consideration paid by new investors and total consideration paid by all stockholders by approximately $1.66 million, assuming that the number of shares offered by us, as set

forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and estimated offering expenses payable by us. Each increase (decrease) of 100,000 shares in the number of shares of common stock offered by us, as set forth on the cover page of this prospectus, would increase (decrease) each of the total consideration paid by new investors and total consideration paid by all stockholders by approximately $920,000, assuming that the assumed public offering price remains the same, and after deducting the underwriting discounts and estimated offering expenses payable by us.

The number of shares of common stock outstanding is based on 10,477,880 shares of common stock issued and outstanding as of June 30, 2021 and excludes the following:

- 4,500,000 shares of common stock issuable upon the conversion of our Series D Convertible Preferred Stock;
- 1,172,120 shares of common stock issuable upon the exercise of our outstanding warrants to purchase common stock at a weighted average price of $1.02 per share;
- 555,826 shares of common stock issuable upon the exercise of our outstanding options to purchase common stock at a weighted average price of $2.59 per share;
- 1,960,000 shares of common stock that will become available for future issuance under our 2021 Stock Plan;
- 1,800,000 shares of common stock issuable upon the exercise of Class A warrants to be issued in this offering;
- 1,800,000 shares of common stock issuable upon the exercise (including the cashless exercise) of Class B warrants to be issued in this offering; and
- 90,000 shares of common stock issuable upon the exercise of warrants to be issued to the underwriters upon the closing of this offering.

CAPITALIZATION

The following table sets forth our capitalization as of June 30, 2021:

- on an actual basis;
- on a pro forma basis, after giving effect to the issuance on August 4, 2021 of an additional $1.5 million in principal amount of convertible debentures, after deducting the origination fees and estimated offering expenses payable by us, and the mandatory conversion of the debentures into Series D convertible preferred stock;
- on a pro forma as adjusted basis, after giving further effect to the sale of Units of our securities in this offering at an assumed public price of $10.00 per Unit, and after deducting the underwriting discounts and estimated offering expenses payable by us.

You should read this table together with the section of this prospectus entitled "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" and our financial statements and related notes included elsewhere in this prospectus.

	As of June 30, 2021		
	Actual	**Pro Forma**	**Pro Forma As Adjusted**
Cash and cash equivalents	$ 2,400,457	$ 3,765,457	$ 19,337,457
Convertible Debentures[(1)]	$ 2,501,904	$ —	$ —
Stockholders' equity (deficit):			
Series D convertible preferred stock, $0.0001 par value: 4,500 shares authorized; 0 shares issued and outstanding actual, 4,500 shares issued and outstanding pro forma and pro forma as adjusted	—	3,811,299	3,811,299
Series E convertible preferred stock, $0.0001 par value: 0 shares authorized, actual, 0 shares authorized and pro forma and pro forma as adjusted; 0 shares issued and outstanding actual and pro forma and pro forma as adjusted	—	—	—
Common stock, $0.0001 par value; 30,000,000 shares authorized, actual pro forma and pro forma as adjusted; 10,477,880 shares issued and outstanding actual, and pro forma and 12,346,067 shares issued and outstanding pro forma as adjusted	1,048	1,048	1,228
Additional paid-in capital	4,916,376	5,083,193	20,387,122
Accumulated deficit	(5,040,909)	(5,040,909)	(5,040,909)
Total stockholders' equity (deficit)	(123,485)	3,854,631	19,158,740
Total capitalization	$ 2,378,419	$ 3,854,631	$ 19,158,740

(1) Net of discount and issuance costs of $539,052, and amortization thereof of $40,956.

The number of shares of common stock outstanding is based on 10,477,880 shares of common stock issued and outstanding as of June 30, 2021 and excludes the following:

- 4,500,000 shares of common stock issuable upon the conversion of our Series D Convertible Preferred Stock;
- 1,172,120 shares of common stock issuable upon the exercise of our outstanding warrants to purchase common stock at a weighted average price of $1.02 per share;
- 555,826 shares of common stock issuable upon the exercise of our outstanding options to purchase common stock at a weighted average price of $2.59 per share;
- 1,960,000 shares of common stock that will become available for future issuance under our 2021 Stock Plan;
- 1,800,000 shares of common stock issuable upon the exercise of Class A warrants to be issued in this offering;
- 1,800,000 shares of common stock issuable upon the exercise (including the cashless exercise) of Class B warrants to be issued in this offering; and
- 90,000 shares of common stock issuable upon the exercise of warrants to be issued to the underwriters upon the closing of this offering.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATION

Prospective investors should read the following discussion and analysis of our financial condition and results of operations together with our financial statements and the related notes and other financial information included elsewhere in this prospectus. Some of the information contained in this discussion and analysis or set forth elsewhere in this prospectus, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties. See "Cautionary Note Regarding Forward-Looking Statements." You should review the "Risk Factors" section of this prospectus for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

All common stock share and per share amounts reported in the following analysis reflect the stock dividend of 2.15 share of common stock for each outstanding share of common stock, effected June 7, 2021 unless indicated otherwise.

Overview

We are a late-stage pre-revenue company focused on improving patient outcomes through a more cost efficient, rapid, near patient product for triage, diagnosis and monitoring of disease progression. We believe there is a market need for an on-site and rapid diagnostic system that can be employed for testing and monitoring. Our diagnostic system, which we refer to as "Symphony," is an exclusively licensed, patented, low-cost, system that consists of a small footprint instrument and single-use indication specific test cartridges, that we believe, if cleared, authorized, or approved by the U.S. Food and Drug Administration ("FDA"), can provide a solution to this market need with rapid and with laboratory quality results in approximately 24 minutes, in the clinic, Intensive Care Unit ("ICU"), Emergency Room ("ER") and in other hospital and clinical setting settings where a rapid and reliable results are required. Currently, testing is generally performed in a laboratory, and the transportation and logistics of transporting the samples to the lab and obtaining the result takes between 8-48 hours. Our platform is a sample-to-result system that has been shown in a clinical study to provide results in 24 minutes. Our business model is to generate revenue from the sale of the table-top Symphony instrument, and from the sale of single-use indication specific cartridges that are used by the Symphony instrument for the diagnostic test. Once the test material (generally a small volume blood sample) is transferred to a single-use indication specific Symphony cartridge, no additional sample preparation or pre-processing is required.

Since inception, we have incurred net losses from operations each year and we expect to continue to incur losses for the foreseeable future. Our losses attributable to operations for the fiscal year ended December 31, 2020 and December 31, 2019 were approximately $1.2 million and $0.8 million, respectively. As of June 30, 2021, we had an accumulated deficit of approximately $5 million.

Going Concern

Our financial statements are prepared based on the assumption that we will continue as a going concern, which contemplates the realization of assets and liquidation of liabilities in the normal course of business. We face certain risks and uncertainties that are present in many emerging growth companies regarding product development and commercialization, limited working capital, recurring losses and negative cash flow from operations, future profitability, our ability to obtain future capital, our protection of patents, technologies and property rights, competition, rapid technological change, navigating the domestic and major foreign markets' regulatory environment, recruiting and retaining key personnel, our dependence on licensing agreements and our lack of sales and marketing activities. These factors raise substantial doubt about our ability to continue as a going concern.

We have relied exclusively on private placements to finance our business and operations. We do not have any credit facilities as a source of future funds. If we are not successful in securing additional outside financing, there are no assurances that investors will continue to fund us to an adequate level of financing needed for the long-term development and commercialization of our products.

There is substantial doubt about our ability to continue as a going concern. The accompanying financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of recorded assets, or the amounts and classification of liabilities that might be different should we be unable to continue as a going concern based on the outcome of these uncertainties described above. Our management and board of directors believe that the net proceeds from this offering, our current cash balance and cash expected to be generated from commercial sales activity, will enable us to fund our operations for at least 12 months.

Results of Operations

Comparison of the Years Ended December 31, 2020 and 2019

The following table sets forth our results of operations for the years ended December 31, 2020 and 2019:

	Years Ended December 31,	
	2020	**2019**
Revenues	$ —	$ —
Operating costs and expenses		
Research and development	527,253	454,610
General and administrative	596,116	883,999
Marketing and business development	73,022	292,804
Total operating expenses	1,196,391	1,631,413
Operating loss	(1,196,391)	(1,631,413)
Other income (expenses)		
Gain on transfer of equipment at fair value	—	741,590
Gain on forgiveness of note payable, Paycheck Protection Program	102,000	—
Derivative warrant liability (loss) gain	(42,434)	9,842
Interest income (expense), net of amortization of premium	(26,997)	52,284
Other income	5,537	7,855
Net loss	$ (1,158,285)	$ (819,842)

Research and Development

Research and development expenses increased approximately $73,000, or 16%, for the year ended December 31, 2020, as compared to the same period of 2019. The increase was due to fees paid and accrued to Toray of approximately $240,000 in connection with our license agreements offset by decreases in payroll and other expenses due to funding shortages in 2020 as compared to 2019.

General and Administrative

General and administrative expenses decreased approximately $288,000, or 33%, for the year ended December 31, 2020, as compared to the same period of 2019. The decrease was primarily attributable to reduced general and administrative expenses related to funding shortages, including salary reductions and reduced spending.

Marketing and Business Development

Marketing and business development expenses decreased approximately $220,000, or 75%, for the year ended December 31, 2020, as compared to the same period of 2019 The decrease was primarily attributable to reduced sales and marketing expenses due to funding shortages, including reduction of expenses and headcount.

Gain on transfer of equipment at fair value

Gain on transfer of equipment at fair value decreased by $742,000 or 100%, for the year ended December 31, 2020 as compared to the same period of 2019, due to recognition of a gain relating to equipment transferred to us as in 2019 part of a licensing deal with Hitachi. As part of this agreement Hitachi transferred approximately $742,000 of equipment for use in the manufacture products licensed and related to the licensed technology. Such equipment was measured at fair value upon transfer to the Company.

Gain on forgiveness of note payable, Paycheck Protection Program

The gain on forgiveness of note payable, Paycheck Protection Program was due to a loan the Company received under the Paycheck Protection Program ("PPP") totaling $116,000 of which $102,000 was forgiven in 2020 as the Company met the requirements as to usage of the funds.

Derivative Warrant Liability Gain (Loss)

Derivative warrant liability loss increased by approximately $52,000 or 531% in the year ended December 31, 2020 as compared to the same period of 2019, primarily because of a revaluation of the derivative warrant liability that is required each reporting period.

Interest Expense, Net of Amortization of Premium

Interest expense increased by approximately $79,000 or 152% in the year ended December 31, 2020 as compared to the same period of 2019. The increase was primarily related to the notes issued in October 2020 which were issued at a discount, the amortization of which increased non-cash interest expense by approximately $65,000, which was offset by the amortization of premium on the notes payable issued in 2017.

Comparison of the Six Months Ended June 30, 2021 and 2020

The following table sets forth our results of operations for the six months ended June 30, 2021 and 2020:

	Six Months Ended June 30,	
	2021	**2020**
Revenues	$ —	$ —
Operating costs and expenses		
Research and development	250,175	105,469
General and administrative	529,741	321,752
Marketing and business development	119,354	39,222
Total operating expenses	899,270	466,443
Operating loss	(899,270)	(466,443)
Other income (expenses)		
Derivative warrant liability (loss) gain	9,676	(49,667)
Interest income (expense), net of amortization of premium	(32,116)	24,610
Grant income	75,000	—
Other income	12,289	5,228
Net loss	$ (834,421)	$ (486,272)

Research and Development

Research and development expenses increased approximately $145,000, or 137%, for the six months ended June 30, 2021, as compared to the same period of 2020. The increase was primarily due to fees paid to Sanyoseiko of approximately $140,000 in connection with developing procedures, necessary components and machines, and trainings needed to manufacture the Symphony analyzers in Sanyoseiko's factories.

General and Administrative

General and administrative expenses increased approximately $208,000, or 65%, for the six months ended June 30, 2021, as compared to the same period of 2020. The increase was primarily attributable to increased accounting, legal, and professional fees of approximately $219,000 related to our preparation to perform an initial public offering of common stock that do not qualify as offering costs, as well as expense for expiring inventory of approximately $85,000, offset by reduced payroll expenses of approximately $114,000 related to headcount reductions in June 2020 due to funding shortages.

Marketing and Business Development

Marketing and business development expenses increased approximately $80,000, or 204%, for the six months ended June 30, 2021, as compared to the same period of 2020. The increase was primarily attributable to increased sales and business development expenses of approximately $90,000 paid to consultants to expand the development and commercialization of our Symphony platform.

Derivative Warrant Liability Gain (Loss)

Derivative warrant liability gain increased by approximately $59,000 or 119% in the six months ended June 30, 2021, as compared to the same period of 2020, primarily because of a revaluation of the derivative warrant liability that is required each reporting period.

Interest Income (Expense), Net of Amortization of Premium

Interest expense increased by approximately $57,000 or 230% in the six months ended June 30, 2021, as compared to the same period of 2020. The increase was primarily related to the amortization of discount and accrued interest on the notes issued in June 2021 of approximately $41,000 and $15,000, respectively, offset by the amortization of premium on the notes payable issued in 2017.

Grant Income

Grant income increased by $75,000 in the six months ended June 30, 2021, as compared to the same period of 2020. The increase was due to a $75,000 grant received from Massachusetts Growth Capital Corporation.

Liquidity and Capital Resources

We have funded our operations to date primarily with net proceeds from sales of our preferred stock and issuance of convertible notes. On June 30, 2021, we had cash of approximately $2.4 million and we had a working capital deficit of approximately $516,000.

In 2017, we issued 106 units, at a purchase price of $20,000 per unit, with each unit consisted of 100 shares of Series A redeemable, convertible preferred stock (“Series A”) at a purchase price of $100 per share and $10,000 in notes payable (the “Notes”). Gross proceeds from the financing were $2,120,000, less $183,194 in issuance costs. All Series A and related notes were converted to common stock and retired on June 1, 2021.

On April 5, 2019, we issued 4,455 shares of Series B redeemable, preferred stock (“Series B”) at a purchase price of $361.50 per share. Gross proceeds from the Series B financing were approximately $1.61 million. We also issued 622 Series B warrants in connection with the Series B financing. Through the rest of 2019 we issued an additional 277 shares of Series B and 41 Series B warrants for gross proceeds of $100,000. In 2020, we issued 456 additional shares of Series B and 68 Series B warrants for gross proceeds of $50,000. The 731 warrants convertible into Series B were adjusted and restated to convert into 36,600 shares of common stock and following the split were convertible into 115,190 shares of common stock.

On October 22, 2020, we issued $154,000 of 8% subordinated promissory notes (“Subordinated Notes”) to related party shareholders, as well as warrants to purchase 1,154,000 (prior to the stock dividend) shares of common stock at $0.10 per share, exercisable in cash or through cancellation of the notes. All warrants were adjusted and restated to be convertible to common stock on June 1, 2021. On June 7, 2021 all notes were converted to common stock pursuant to related warrants or repaid (see below).

In November 2020, we issued 636 shares of Series C redeemable, convertible preferred stock (“Series C”) at a purchase price of $1,578.50 per share and received proceeds, net of issuance costs of approximately $995,000. All shares were converted to common stock in June 2021.

In 2020, we received loan proceeds of $116,000 from a Paycheck Protection Program loan (“PPP loan”). In November 2020, we received notice of forgiveness of $102,000 of principal of the PPP loan and, in February 2021, we received an adjustment which increased the forgiven balance by approximately $5,000 and repaid the $9,000 related to the unforgiven balance.

On June 1, 2021, our Series A with a stated value of approximately $1.1 million was converted into 530,000 (prior to the stock dividend) shares of common stock, our Series B preferred stock with a stated value of approximately $1.8 million was converted into 259,350 (prior to the stock dividend) shares of common stock, and our Series C preferred stock with a stated value of approximately $1.0 million was converted into 31,800 (prior to the stock dividend) shares of common stock. In addition, holders of our 2017 secured notes amended and restated their agreement such that the notes would automatically convert into 184,292 (prior to the stock dividend) shares of common stock upon the occurrence of a qualified financing (as defined in the notes) and certain warrants issued in connection with the issue of Series B preferred stock were amended and restated to be exercisable into common stock.

On June 7, 2021, certain holders of approximately $132,000 in principal of our convertible subordinated notes elected to convert their debt, inclusive of accrued interest, into 1,323,830 (prior to the stock dividend) shares of common stock and we repaid the remaining principal and interest of approximately $28,000 on the remaining notes.

Also on June 7, 2021, we:

- declared a stock dividend which increased the number of shares of common stock outstanding from 3,329,272 to 10,477,880;
- adjusted the number of shares of common stock issuable upon exercise of the restated Series B warrants from 36,600 to 115,190;
- adjusted the number of shares of common stock issuable upon exercise of the remaining warrants issued with subordinated notes from 216,170 to 680,331;
- adjusted the number of shares issuable upon exercise of outstanding options under our 2018 equity incentive plan from 119,416 to 375,826 and the number of shares reserved for issue under future grants from 80,584 to 253,614; and
- approved an amendment to our certificate of incorporation to increase the number of authorized shares of common and preferred stock to 30 million and 5 million shares, respectively.

On June 8, 2021, we entered into an agreement to issue a total of $4.5 million of 7.5% Senior Secured Convertible Debentures (the “Debentures”) to Sabby Volatility Master Fund, Ltd (“Sabby”), of which $3.0 million of the Debentures were issued at closing. The agreement provides for the purchase by Sabby of an additional $1.5 million of the Debentures after we file a registration statement for an initial public offering. The Debentures are convertible, at Sabby’s option, into our Series D Preferred Stock at a conversion price of $1,000 per share.

On August 4, 2021 we issued and additional $1.5 million in principal amount of the Debentures to Sabby.

Upon completion of this offering, we expect our existing cash and the net proceeds of this offering to support our operations for at least 12 months. In order to finance continued business development, to generate sales, to invest in further research and development and to otherwise satisfy obligations as they mature, we may need to seek additional financing through the issuance of common stock, preferred stock, and convertible or non-convertible debt financing. Additional funding, however, may not be available to us on acceptable terms, or at all. If we are unable to access additional funds when needed, we will not be able to continue the development of our platform, our tests or we could be required to delay, scale back or eliminate some or all of our research and development programs and other operations. Any additional equity financing, if available to us, may not be available on favorable terms, will most likely be dilutive to our current stockholders, and debt financing, if available, may involve restrictive covenants. Any of these events could harm our business, financial condition and prospects.

Our independent registered public accounting firm has included an explanatory paragraph relating to our ability to continue as a going concern in its report on our audited financial statements. We may be unable to continue to operate without the threat of liquidation for the foreseeable future unless we raise additional capital.

Summary Statement of Cash Flows for the Years Ended December 31, 2020 and 2019

The following table summarizes our cash flows for the periods indicated:

	Years Ended December 31,	
	2020	**2019**
Net cash provided by (used in):		
Operating activities	$ (508,710)	$ (1,690,118)
Investing activities	—	(6,021)
Financing activities	1,325,060	1,511,801
Net increase (decrease) in cash and cash equivalents	$ 816,350	$ (184,338)

Net Cash Used in Operating Activities

Net cash used in operating activities was approximately $509,000 for the year ended December 31, 2020. We had a net loss of approximately $1.2 million offset by non-cash loss on revaluation of our derivative warrant liability of approximately $42,000, and an increase in operating liabilities of approximately $538,000 and a decrease in operating assets of approximately $58,000. The change in operating assets and liabilities was due to our efforts to conserve cash in the period prior to closing our Series C financing which occurred in November 2020 and most invoices were paid in January 2021.

Net cash used in operating activities was approximately $1.7 million for the year ended December 31, 2019. We incurred a net loss of approximately $820,000, a non-cash gain of $742,000 on the transfer of equipment used in the manufacture of the licensed technology from Hitachi as part of an agreement and a decrease in working capital of approximately $178,000. We anticipate our research and development efforts and on-going general and administrative costs will generate negative cash flows from operating activities for the foreseeable future.

Net Cash Provided by Financing Activities

Net cash provided by financing activities was approximately $1.3 million for the year ended December 31, 2020. The proceeds were primarily the result of receipt of approximately $60,000 related to our Series B financing, approximately $995,000 related to our Series C financing, approximately $154,000 related to our 2020 subordinated promissory notes, and approximately $116,000 related to our PPP loan.

Net cash provided by financing activities was approximately $1.5 million for the year ended December 31, 2019. The proceeds were primarily attributable to $1.7 million related to our Series B financing offset by $265,000 in principal payments on notes payable.

Summary Statement of Cash Flows for the Six Months Ended June 30, 2021 and 2020

The following table summarizes our cash flows for the periods indicated:

	Six Months Ended June 30,	
	2021	**2020**
Net cash provided by (used in):		
Operating activities	$ (732,669)	$ (264,829)
Investing activities	1,934	—
Financing activities	2,218,831	223,926
Net increase (decrease) in cash and cash equivalents	$ 1,488,096	$ (40,903)

Net Cash Used in Operating Activities

Net cash used in operating activities was approximately $733,000 for the six months ended June 30, 2021. We had a net loss of approximately $834,000 offset by non-cash depreciation expense of approximately $64,000, and an increase in working capital of approximately $50,000. The change in working capital was primarily due to expiring inventory we wrote down of approximately $85,000 and an increase in accrued expenses of approximately $77,000 offset by a decrease in payables of approximately $108,000.

Net cash used in operating activities was approximately $265,000 for the six months ended June 30, 2020. We incurred a net loss of approximately $486,000, offset by an increase in payables and accrued expenses of approximately $221,000.

Net Cash Provided by Financing Activities

Net cash provided by financing activities was approximately $2.2 million for the six months ended June 30, 2021. The proceeds were primarily the result of receipt of $3 million from the issuance of convertible debentures in June 2021, offset by issuance costs of $395,000, deferred offering costs of approximately $88,000, and payments of our outstanding notes payable of approximately $290,000.

Net cash provided by financing activities was approximately $224,000 for the six months ended June 30, 2020. The proceeds were primarily attributable to $116,000 from our PPP loan and approximately $108,000 we received from issuance of Series B redeemable, convertible preferred stock, net of issuance costs.

Recently Adopted Accounting Standards

In August 2020, FASB issued ASU 2020-06, Debt — Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity, which, among other things, provides guidance on how to account for contracts on an entity's own equity. This ASU eliminates the beneficial conversion and cash conversion accounting models for convertible instruments. It also amends the accounting for certain contracts in an entity's own equity that are currently accounted for as derivatives because of specific settlement provisions. In addition, this ASU modifies how particular convertible instruments and certain contracts that may be settled in cash or shares impact the diluted EPS computation. The amendments in this ASU are effective for public companies for fiscal years beginning on or after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020. The Company elected to adopt early this guidance in the first quarter of 2021. The adoption of this standard had no material impact on the Company's financial statements.

We have analyzed all other recent accounting pronouncements and determined that no others would have a material impact on the Company.

Critical Accounting Policies and Estimates

Some of our critical accounting policies require us to make difficult, subjective or complex judgments or estimates. An accounting estimate is considered to be critical if it meets both of the following criteria: (i) the estimate requires assumptions about matters that are highly uncertain at the time the accounting estimate is made, and (ii) different estimates reasonably could have been used, or changes in the estimate that are reasonably likely to occur from period to period may have a material impact on the presentation of our financial condition, changes in financial condition or results of operations.

As an emerging growth company, we have elected to opt-in to the extended transition period for new or revised accounting standards. As a result, our financial statements may not be comparable to those of companies that comply with public company effective dates.

Derivative Instruments

We issued warrants to purchase preferred stock as part of our Series B Preferred Stock issuance in 2020 and 2019 that do not meet the requirements for classification as equity and are classified as liabilities. In such instances, net-cash settlement is assumed for financial reporting purposes, even when the terms of the underlying contracts do not provide for a net-cash settlement. Such financial instruments are initially recorded at fair value with subsequent changes in value charged (credited) to operation each reporting period. If these instruments subsequently meet the requirements for classification as equity, the Company reclassifies the then fair value to equity. The Company values its outstanding warrants using the Black-Scholes option pricing model.

Long-Lived Assets

Purchased property and equipment are carried at cost. Transferred property and equipment are carried at the estimated fair value as of the date of transfer. Depreciation expense is provided over the estimated useful lives of the assets using the straight-line method. Equipment was transferred to us as part of a licensing deal with Hitachi in

2019. The agreement provides us with an exclusive, non-transferable license to licensed technology information and patents to make, use, sell, market export or otherwise distribute the product and specifies that Hitachi is responsible for transferring all equipment and machinery necessary to manufacture the product from Japan to our US facilities. Hitachi was also responsible for providing training on the operation, maintenance, and use of the machinery and manufacturing know-how of the product. In exchange for those concessions, we released Hitachi from all charges, claims, obligations, and costs arising out of our prior agreement. There was no other consideration exchanged as part of this agreement. We determined the fair value of the equipment transferred was approximately $742,000 at the time of transfer based on an outside third-party valuation.

Long-lived tangible assets, including property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of the asset may not be recoverable. We regularly evaluate whether events or circumstances have occurred that indicate possible impairment and rely on a number of factors, including expected future operating results, business plans, economic projections, and anticipated future cash flows. We use an estimate of the future undiscounted net cash flows and comparisons to like-kind assets, as appropriate, of the related asset over the remaining life in measuring whether the assets are recoverable. Measurement of the amount of impairment, if any, is based upon the difference between the asset's carrying value and estimated fair value. Fair value is determined through various valuation techniques, including cost-based, market and income approaches as considered necessary. We depreciate intangible assets on a straight-line basis over their estimated useful lives.

Off Balance Sheet Arrangements

We do not have any off-balance sheet arrangements as defined in the rules and regulations of the SEC. We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or for any other contractually narrow or limited purpose.

Emerging Growth Company and Smaller Reporting Company Status

We are an emerging growth company, as defined in the JOBS Act. Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards issued subsequent to the enactment of the JOBS Act until such time as those standards apply to private companies. We elected to use this extended transition period for complying with new or revised accounting standards that have different effective dates for public and private companies until the earlier of the date that we (i) are no longer an emerging growth company or (ii) affirmatively and irrevocably opt out of the extended transition period provided in the JOBS Act. As a result, these financial statements may not be comparable to companies that comply with the new or revised accounting pronouncements as of public company effective dates. We are using the extended transition period for any other new or revised accounting standards during the period in which we remain an emerging growth company.

We will remain an emerging growth company until the earliest of (i) the last day of our first fiscal year (a) following the fifth anniversary of the completion of this offering, (b) in which we have total annual gross revenues of at least $1.07 billion or (c) in which we are deemed to be a large accelerated filer, which means the market value of our common stock that is held by non-affiliates exceeds $700 million as of the prior June 30th and (ii) the date on which we have issued more than $1.0 billion in non-convertible debt securities during the prior three-year period.

We are also a "smaller reporting company," meaning that the market value of our stock held by non-affiliates plus the proposed aggregate amount of gross proceeds to us as a result of this offering is less than $700.0 million and our annual revenue is less than $100 million during the most recently completed fiscal year. We may continue to be a smaller reporting company after this offering if either (i) the market value of our stock held by non-affiliates is less than $250 million or (ii) our annual revenue is less than $100 million during the most recently completed fiscal year and the market value of our stock held by non-affiliates is less than $700 million. If we are a smaller reporting company at the time we cease to be an emerging growth company, we may continue to rely on exemptions from certain disclosure requirements that are available to smaller reporting companies. Specifically, as a smaller reporting company we may choose to present only the two most recent fiscal years of audited financial statements in our Annual Reports on Form 10-K and, similar to emerging growth companies, smaller reporting companies have reduced disclosure obligations regarding executive compensation.

BUSINESS

Overview

We are a late-stage pre-revenue company focused on improving patient outcomes through a more cost efficient, rapid, near patient product for triage, diagnosis and monitoring of disease progression. We believe there is a market need for an on-site and rapid diagnostic system that can be employed for testing and monitoring. Our diagnostic system, which we refer to as "Symphony," is an exclusively licensed, patented, low-cost, system that consists of a small footprint instrument and single-use indication specific test cartridges, that we believe, if cleared, authorized, or approved by the U.S. Food and Drug Administration ("FDA"), can provide a solution to this market need rapidly and with laboratory quality results in approximately 24 minutes, in the clinic, Intensive Care Unit ("ICU"), Emergency Room ("ER") and in other hospital and clinical setting settings where a rapid and reliable results are required. Currently, testing is generally performed in a laboratory, and the transportation and logistics of transporting the samples to the lab and obtaining the result takes between 8-48 hours. Our platform is a sample-to-result system that has been shown in a clinical study to provide results in approximately 24 minutes. Our business model is to generate revenue from the sale of the table-top Symphony instrument, and from the sale of single-use indication specific cartridges that are used by the Symphony instrument for the diagnostic test. Once the test material (generally a small volume blood sample) is transferred to a single-use indication specific Symphony cartridge, no additional sample preparation or pre-processing is required. Based on the results of the clinical study described below, we believe Symphony may be able to eliminate the time required for transportation and logistics and may be able to eliminate the number of operational 'touch-points' from 'sample-to-result' from six to two.

Our technology is the result of more than 12 years of development by our development partner and investor, Toray Industries, Inc. ("Toray"). For the past three years, Toray has used the technology successfully as a Research Use Only ("RUO") product in Japan by selected clinical institutions for measurement of IL-6 in rheumatoid arthritis to monitor disease progression. Based in part on this extensive development, we believe we are positioned now to complete the last stages of development needed to move to commercialization in the US.

In a 2016 study conducted in Japan (the "Japan Study"), which was sponsored by Toray, it was shown that the Symphony system (known as the RAY-FAST system in Japan) is able to provide accurate results within 24 minutes. The Japan Study was conducted at the University of Yamanashi Hospital in Yamanashi, Japan to evaluate the accuracy and efficacy of the Symphony system in rheumatoid arthritis patients. The results of the study were published in Cytokine, "Development of a quick serum IL-6 measuring system in rheumatoid arthritis" (Volume 95. July 2017). In the Japan Study, 150 blood samples were collected from 76 rheumatoid arthritis patients, of which 16 samples were lower than the detection limit of the Symphony system. The Japan Study then examined the correlation between the results from the Symphony system and the chemiluminescent enzyme immunoassay (CLEIA) method. The serum IL-6 concentrations measured by the Symphony system were positively correlated with those measured by the CLEIA method. The correlation between the Symphony system and CLEIA method for IL-6 was $r = 0.941$ (the closer the r-value is to 1, the more closely the two variables are related). As such, the Japan Study concluded that the Symphony system was as accurate as CLEIA methods. In addition, the Japan Study confirmed the time required for the measurement of the IL-6 concentration to be 24 minutes.

Our first diagnostic test in development is for triage of sepsis in patients utilizing Interleukin-6 ("IL-6") as the target biomarker. According to a report by Market Data Forecast (February 2020), the total market for IL-6 testing for sepsis triage was $934 million in 2020 and is estimated to reach $1.4 billion by 2025 growing at a CAGR of 8.5%. IL-6 has important roles in both innate and adaptive immunity. It is an inflammatory biomarker, also considered as a 'first-responder,' that is elevated in patients with infection, sepsis, and septicemia. Reports have shown IL-6 concentrations correlate with severity of sepsis, progression of cancer, rheumatoid arthritis and many other severe conditions as defined by clinical and laboratory parameters. IL-6 is a clinically established biomarker for assessment of severity of infection and inflammation across many disease indications. It is a biomarker that appears early on as a 'first responder' during infection or inflammation. One factor that is a challenge for healthcare professionals to overcome is the amount of time it takes to determine if a patient is septic. It usually takes about several hours to receive the lab results of a patient who may be in a very critical state, and the risk of dying increases every hour a patient is not treated for sepsis. We believe detection of IL-6 early on might allow physicians to make better therapeutic and treatment decisions. Due to the clinical significance of IL-6 testing, hospital systems and centralized testing labs routinely utilize IL-6 testing.

The importance of IL-6 testing has been further highlighted during the COVID-19 pandemic, and IL-6 concentrations in blood have been found to be heightened in patients with COVID-19-associated systemic inflammation and hypoxic respiratory failure. In addition, certain of the institutions that we are working with on our clinical studies have Clinical Laboratory Improvement Amendments ("CLIA") certified labs. These CLIA certified laboratories, might adopt Symphony IL-6 tests for their clinical testing as laboratory developed tests.

We are further developing a pipeline of diagnostic tests for Symphony including triage of myocardial infarction ("MI"), congestive heart failure ("CHF"), neutropenic sepsis in cancer, and other disease diagnostic indications using the same Symphony platform. We intend to pursue the general diagnostic marketplace following a sufficient clinical trial to support a 510(k) submission with the FDA, with the initial indication as a general diagnostic test for sepsis in triage of patients. We do not currently have any regulatory cleared products and our products will need to receive regulatory authorization from FDA, in order to be marketed as a diagnostic product in the United States.

Our operations to date have been funded primarily through sales of preferred stock and convertible notes. We expect to incur increasing expenses over the next two years to develop additional diagnostic tests, to expand our sales and marketing infrastructure, and our research and development activities. We believe the proceeds from this offering will be sufficient to reach commercialization.

We were incorporated under the laws of Delaware on March 20, 2015. Our headquarters are located in Acton, Massachusetts.

Symphony Advantages

We believe there is a fast-growing market for near-patient, low-cost diagnostic platforms that are used for time-sensitive patient testing in life-threatening situation in hospitals, Long-Term Acute Care facilities ("LTACs"), intensive-care units ("ICUs") and clinics to replace legacy testing formats and processes. We believe our platform is well positioned to meet this need. Based on the results of the Japan Study, we believe Symphony may be able to provide results within approximately 24 minutes. In addition, based on the results of the Japan Study, we believe Symphony may be able to reduce test result time from days to minutes and to provide results that appear to be as accurate as those performed in a laboratory, allowing for more frequent testing, which we believe may lead to shortened hospital stays and improved patient outcomes, all of which also leads to reduced patient care costs.

Symphony is an automated diagnostic system, consisting of a fluorescence immuno-analyzer which uses a single-use diagnostic test cartridge with reagents integrated in the cartridge. Symphony utilizes a 'sample-to-result' format, which means that once a specimen is taken from the patient, it is placed in the cartridge and then the cartridge is placed inside the analyzer where the test is run without further technician intervention or additional reagent. This reduces test complexity and eliminates the need for highly trained and expensive laboratory technicians to run the tests. Our platform is designed to enable simple, rapid, and cost-effective analysis from a single clinical sample, which will allow LTACs, hospitals and clinics that traditionally could not afford more expensive or complex diagnostic testing platforms to modernize their laboratory testing and provide better patient testing at an affordable cost in time sensitive, life threatening situations. We believe our on-site testing may also help avoid potential penalties often imposed on LTACs by insurance companies for failure to monitor for potential sepsis.

Based on the results of the Japan Study, we believe Symphony IL-6 can make a significant impact with turn-around time. As the whole blood samples do not need to be pre-processed, this medical device can be run at the patient's bedside, effectively eliminating the extended turn-around time for lab results.

If incorporated in the hospital workflow, this medical device can provide assistance with monitoring patients post-surgery, and monitoring patients admitted in the emergency room who are suspected to have acute symptoms of sepsis.

We believe our technology can provide the following advantages over traditional diagnostic systems:

- *Ease of Use*. Symphony is a sample-to-results system. No sample preparation or pre-processing is required. Once the samples are placed inside the cartridge and the cartridge is placed in the analyzer, the technician does not need to monitor the test and can complete other unrelated tasks.
- *Cost Savings*. We believe that the Symphony system and our expected pricing strategy will make it possible for LTACs, clinics and many types of hospitals that have cost constraints to adopt in-house testing. Our customers will be able to either purchase the analyzer or lease it at an affordable price through

a third-party leasing company. A typical Symphony test would cost approximately $80 (the cost of the single-use cartridge to the health-care facility) compared to the approximately $275 per test charged by a third-party lab, excluding overhead and transportation cost.

- *Time Savings*. Saving pre-processing time for samples reduces time to test results by approximately 1-2 hours depending on the pre-processing required for a particular assay system. Furthermore, as current tests can only be performed in a laboratory, the transportation and logistics of transporting the samples to the lab and obtaining the result takes between 8-48 hours. Based on the results of the Japan Study, we believe Symphony may be able to eliminate the time required for transportation and logistics and may be able to eliminate the number of operational 'touch-points' from 'sample-to-result' from six to two.

- *Space Savings*. Symphony's significantly smaller tabletop design (14.5 inches by 10.5 inches), compared to the 100-200 square feet of space required by other diagnostic systems, will make it possible for many healthcare providers to perform in-house testing where there is limited available laboratory space.

- *Versatile Platform with the Capability to Deliver a Broad Test Menu*. Our Symphony platform has the potential for broad application across a number of areas in near-patient diagnostic testing. The same analyzer can be utilized for all of our planned future diagnostic tests.

- *Throughput and Multiple Testing Capability*. Our platform has been designed to provide the ability to analyze up to six distinct targets or six different patient samples simultaneously within approximately 24 minutes. This functionality will allow any organization to run multiple tests or panels on a single analyzer.

Our Market

According to research published by Allied Market Research (Global Invitro Diagnostics Market, 2020-2027), the global in vitro diagnostics market was $67.1 billion in 2019; projected to reach $91.1 billion by 2027, a compound annual growth rate ("CAGR") of 4.8% over 7 years driven by prevalence of chronic diseases including cancer, autoimmune diseases, and other inflammatory conditions. We believe the Symphony sample-to-result platform is well suited to address a subset of this market, including sepsis, cardio-metabolic diseases, cancer and other diseases that require time-sensitive, near-patient testing.

According to a report by Market Data Forecast (February 2020), the total market for IL-6 testing for sepsis triage was $934 million in 2020 and is estimated to reach $1.4 billion by 2025 growing at a CAGR of 8.51%. Our platform is designed to provide on-site and rapid test results, with no pre-processing of the blood, and as such, we intend to pursue the following markets for triage:

- *Sepsis Triage using IL-6*. According to the CDC, each year, at least 1.7 million adults in America develop sepsis and nearly 270,000 Americans die as a result of sepsis. In the United States, 1 in 3 patients who dies in a hospital has sepsis. In addition, in 2016, according to the National Center for Health Statistics, 8.3 million people were served by LTACs. A major responsibility of these LTAC facilities is to monitor sepsis. We estimate the potential total market for sepsis triage testing in LTACs is approximately $2–$3 billion annually. Septic shock and multi-organ failure was the most common cause of death in COVID-19 patients, often due to suppurative pulmonary infection.

- *Chest Pain Triage using hsTNT and NT-proBNP*. According to a Washington Post article in April 2019, there are 7.6 million people in the United States each year who visit or are admitted to the hospital with chest pain. Research suggests that about 50% of those patients are admitted for further observation and care of potential heart disease, and that approximately 3.6 million people annually needed cardiac triage. Two major biomarkers that are assessed to diagnose and monitor cardiac irregularities are hsTNT and NT-proBNP. These clinically established biomarkers generated approximately $4.6 billion in revenue in 2019 and will continue to grow with a CAGR of 11.2% through 2027. We are developing diagnostic tests for triage situations, using these cardiac biomarkers (hsTNT and NT pro-BNP), which were approximately a $3.6 billion market in 2020 and are estimated to be $5.5 billion by 2025, a CAGR of 8.9% (report by Markets and Markets, January 2021).

The CDC National Center for Health Statistics estimates that the market for the diagnostic cardiac triage tests will increase by more than 20% per year over the next several years. Many factors are driving the growth of these markets, particularly the accelerating adoption of near-patient testing inside hospitals, LTACs and ICUs. According

to the 2021 edition of American Hospital Association Hospital Statistics, there were approximately 6,090 hospitals in the United States in 2019, approximately 5,000 of which are considered community hospitals. According to outside research, fewer than half of these facilities have the capabilities, technology and products for near-patient diagnoses for triage of either sepsis or cardiac conditions. We believe these facilities are candidates for our diagnostic platform.

Our Business Model

Our goal is to become a leading provider of sample-to-result, 'near-patient' diagnostic testing in infectious, inflammatory and metabolic diseases by leveraging the strengths of our Symphony platform. We intend to market the use of Symphony by targeting our sales and marketing to LTACs, clinics, and community hospitals in the United States. We believe that the format of our low-cost, 'near-patient' platform will be attractive to these institutions which may not otherwise have the financial resources, laboratory space, or trained personnel to justify the purchase of a diagnostic solution. Our business model relies on the following:

- *Attractive Financing Model*. We intend to provide our customers the ability to lease our analyzer at an affordable cost through third-party financial institutions. As such, our business model will not require a significant capital outlay by health care facility customers and, by moving testing in-house, will create a profit center for the facility.

- *Recurring Revenue*. We intend to sell our customers disposable, single-use diagnostic test cartridges. Our single-use test cartridges will create a growing and recurring revenue stream for us as we sell more systems, as adoption and utilization increases, and as we develop tests for additional indications. We expect the sale of test cartridges to generate the majority of our revenue.

- *Expand our Menu of Diagnostic Products*. If adoption increases, we believe the average customer use of the Symphony platform will begin to increase. As we expand our test menu, we believe we will be able to increase our annual revenue per customer through the resulting increase in utilization. To that end, we are in development on a broad menu of diagnostic tests that we believe will satisfy growing medical needs and present attractive commercial opportunities.

- *Increase our revenue and reduce our cost of sales through a 'waterfall' sales strategy*. Our proprietary test cartridges and Symphony analyzers are manufactured through our agreements with Toray and Sanyoseiko Co., Ltd. ("Sanyoseiko"), thus reducing the manufacturing cost structure. They currently build our Symphony system and test cartridges and currently purchase materials at high per unit cost due to low purchase volumes. We believe that by focusing our initial sales efforts on multi-location institutions, increased adoption and utilization of Symphony may lead to increasing sales within a relatively small customer base. We believe sales within those institutions may lower our salesforce costs. We believe the increased unit sales of our Symphony and cartridges will not only increase revenue, but will also allow us to reduce manufacturing costs and improve gross margins enhancing our ability to provide a lower cost solution to customers.

Our Symphony Platform

Symphony

The Symphony platform is an innovative and proprietary technology platform that in the Japan Study appeared to provide rapid and accurate measurements of key diagnostic biomarkers found in whole blood. Symphony is compact and portable as compared with current laboratory diagnostic platforms that we believe, based on the Japan Study, provide comparable sensitivity. In the Japan Study, Symphony appeared to provide lab-quality results in a near-patient setting. Symphony is designed for usability; all sample preparation and reagents are integrated into the disposable Symphony Cartridges. Symphony only needs a few hundred femtograms (10^{-10} grams) of the target to provide quantitation directly from whole blood. Therefore, Symphony only requires a few drops of blood to generate a result in approximately 24 minutes.

Symphony is comprised of the Symphony Fluorescence Immuno-analyzer and the Symphony Cartridge Library, shown in Figure X1. The Symphony analyzer orchestrates whole blood processing, biomarker isolation, and immunoassay preparation using non-contact centrifugal force. All necessary reagents and components are integrated into the Symphony Cartridges. Utilizing precision microchannel technology and high specificity antibodies, whole

blood is processed and the biomarker is isolated within the Symphony Cartridge. Intermitted centrifugation cycles enable complex fluid movements, enabling sequential reagent additions and independent reaction steps inside the hermitically sealed Symphony Cartridge. At the conclusion of the test, the Symphony analyzer measures the fluorescence signature correlating to a highly sensitive quantitation of the biomarker.

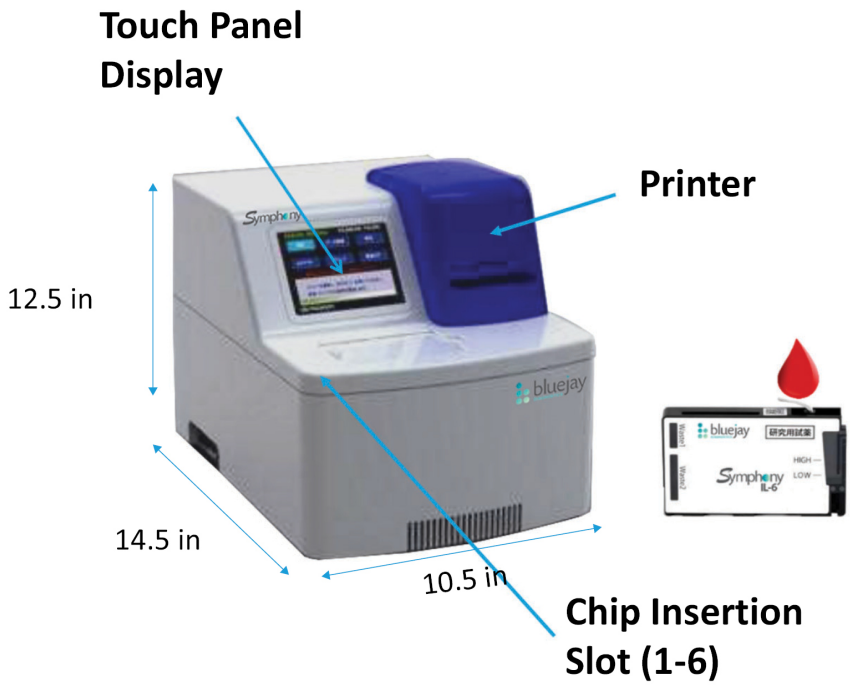

Figure X1. Photograph of the Symphony Fluorescence Immuno-analyzer and a Symphony IL-6 Cartridge. Barcode reader (not pictured) is included to streamline clinical workflow.

Although our first commercial offering will be focused on the detection and quantitation of IL-6, we believe the flexibility of our technology will allow us to deploy new biomarkers for additional indications. Every Symphony Cartridge inserted in the analyzer has a unique code which programs the Symphony to perform the specific test. This unique feature will enable the release of new tests without the need for system redesigns or updates. Furthermore, this automated feature will eliminate the need for system recalibrations for every product lot, further streamlining the clinical workflow and enhancing usability.

The Symphony IL-6 test principle employs direct sandwich Enzyme Linked Immunosorbent Assay (“ELISA”) for the quantitation of human IL-6 by fluorescence enzyme immunoassay (“FEIA”), as shown in Figure X2. Within the single-use Symphony IL-6 Cartridge, the assay separates plasma from whole blood and forms complexes through reaction of any IL-6 present in the sample with highly specific IL-6 binding antibodies. After the IL-6 sandwich is formed, a fluorescent substrate is enzymatically decomposed to generate fluorescent molecules. The fluorescence intensity is measured and converted to IL-6 concentration, and the entire process is enclosed within the Symphony IL-6 Cartridge and is controlled and measured by the Symphony Fluorescence Immuno-analyzer.

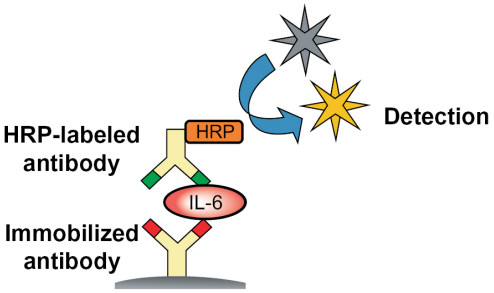

Figure X2. Overview of the Symphony IL-6 test principle.

The Symphony Test Cartridge

To perform a Symphony test, the test operator adds three drops of blood to the Symphony Cartridge. The volume does not have to be precise because the cartridge is able to work with a range of 0.1 — 0.2 cc, which can be visualized with a fill-gauge on the Symphony Cartridge as shown in Figure X3. After scanning in the patient ID, the Symphony Cartridge is inserted into the Symphony and the test proceeds automatically. Up to six Symphony Cartridges can be tested simultaneously, enabling up to six different patients or six different biomarkers to be tested at once on a single machine. In approximately 24 minutes, the measurement results are produced, and a clinical decision can be made.

The disposable cartridge contains the reagents required to run the applicable test. The three steps of the test (sample preparation, chemical reaction, and detection) are performed in chambers present on the cartridge. All waste is collected in a chamber in the cartridge significantly reducing the risk of lab contamination that is often cited as a concern of molecular diagnostic testing. After the test is completed and the result is obtained, the cartridge is disposed of with the hospital's other medical waste.

Figure X3. Photograph of the Symphony IL-6 Cartridge loaded with a whole blood specimen.

Manufacturing

We plan to manufacture both our devices and cartridges through Contract Manufacturing Organizations ("CMOs"). We have contracts with Toray to manufacture our cartridges and Sanyoseiko to manufacture both our devices and cartridges. Pursuant to our agreement with Toray, we are required to use Toray to manufacture test cartridges for a period of three years. We believe both companies are well-known and well-established global manufacturing companies with capabilities to scale up, re-design and supply our devices and cartridges globally when needed. Therefore, we believe we will have the capability to supply globally, when required. Both Toray and Sanyoseiko facilities are located in Japan.

We outsource our manufacturing due to a number of factors; including,

- The cost of initiating and scaling in-house manufacturing is capital intensive,
- It would take significant time to establish our own manufacturing facilities,
- It would take significant time to obtain necessary certifications by regulatory authorities; and
- There would be a significant personnel and maintenance costs to maintain production in compliance with regulations.

In the first quarter of 2021, we established Sanyoseiko as our large-scale contract manufacturing organization. Toray will continue to develop, validate and manufacture our current IL-6 cartridges and other cartridges in our product pipeline as our pilot-manufacturing partner.

Regulatory Strategy

We license the technology for Symphony from Toray. Our license grants us exclusive world-wide use with the exception of Japan. Toray started developing the Symphony (known as RAY-FAST in Japan) to complement one of its sepsis related products for blood purification during sepsis. Development of RAY-FAST begin in 2006. For the past 3-4 years, RAY-FAST has been used successfully as a RUO product in Japan by selected clinical institutions for measurement of IL-6 in rheumatoid arthritis to monitor disease progression for the purpose of clinical validation, efficacy, monitoring potential adverse conditions reporting, robustness, durability and customer feedback on usability.

Our initial regulatory pathway is to label and distribute Symphony as an RUO product in the U.S. Certain laboratories may choose to utilize the RUO Symphony in an LDT. An LDT is a type of *in vitro* diagnostic test that is designed, manufactured and used within a single laboratory. In parallel, we are pursuing 510(k) clearance from FDA to use Symphony for *in vitro* diagnostic use. In order to expedite the submission of our 510(k), we may seek to obtain data from laboratories using the RUO Symphony in LDTs.

Symphony IL-6

Our Symphony IL-6 product candidate is intended for early and rapid identification of sepsis during Emergency Department (“ED”), critical care triage, and neutropenic sepsis in oncology patients. Our Symphony IL-6 product candidate is also intended for monitoring disease progression during such treatment regimen.

We are conducting a multi-center clinical study at The University of Texas, Southwestern Medical Center; Parkland Clinic; William P. Clements Jr. University Hospital (CUH); and Zale Lipshy Pavilion Hospital under a single protocol. Our clinical study will involve:

- A reference range study. For the reference range study, 120 subjects will be enrolled to achieve at a minimum 100 qualified data points for the statistical analysis. The reference range (2.5^{th} to 97.5^{th} centile) will be estimated using parametric methods. Parametric methods will be used to calculate the 95% confidence intervals for the reference limits. Nonparametric estimates of the reference limits with confidence intervals will be computed as a sensitivity analysis.
- A cutoff value study. For the cutoff value study, 96 subjects will be enrolled to achieve at a minimum 80 qualified data points for the statistical analysis. For the cutoff value study, the Receiver Operating Characteristic (“ROC”) curve will be estimated. The ideal cutoff, which gives a point on the ROC curve that is closest to the (0.1) point, will be selected based on the results from this study.
- A cutoff validation study. For the cutoff validation study, 48 patients will be enrolled into the study to achieve at a minimum 40 qualified data points. Data from previous studies with other IL-6 measurement systems suggest a prevalence of intubation in this population of roughly 25% and a test sensitivity of roughly 85% and specificity of roughly 65% at the estimated optimal cutoff value. Clinical sensitivity, clinical specificity, positive predictive value, negative predictive value, and corresponding 95% confidence intervals will be calculated using the cutoff value determined from the cutoff value study.

In parallel to these studies, we intend to capture the necessary analytical data required for FDA submission. These studies will be performed using patient samples with natural IL-6 and will be performed in accordance with the Clinical & Laboratory Standards Institute (“CLSI”) guidelines. We plan for these tests to be completed in October 2021.

In December 2021, we plan to start clinical studies at other clinical sites to support additional indications and possibly additional FDA premarket submissions. In addition to ICUs, we plan to add both adult and pediatric oncology patients. We plan to perform blood collections by both venipuncture and capillary collection, which includes both finger stick and heel stick, in our studies so we can support these indications for use.

Blood collection for pediatric patients is often faced with many challenges due to their limited supply of blood and the difficulty of performing venipuncture collections. We believe the small amount of blood needed for Symphony will be very attractive for pediatric healthcare. Furthermore, we have planned in our clinical studies to include finger stick and heel stick blood collection to further reduce the clinical burden of performing tests in pediatric patients.

In January 2022, we plan to submit a pre-submission application to the FDA presenting our study design and the data from our first set of studies. We will use their feedback, if necessary, to modify the ongoing studies and to construct the FDA clearance application. We plan to submit our FDA clearance application at the end of the third quarter of 2022.

The importance of IL-6 testing has been further highlighted during the COVID-19 pandemic, and IL-6 concentrations in blood have been found to be heightened in patients with COVID-19-associated systemic inflammation and hypoxic respiratory failure. If clinical studies are successful, our Symphony IL-6 product candidate could also be used with confirmed COVID-19 illness to aid in determining the risk of intubation with mechanical ventilation, in conjunction with clinical findings and the results of other laboratory testing. We believe our planned study design will also qualify us to apply for EUA for confirmed COVID-19 illness to aid in determining the risk of intubation with mechanical ventilation, in conjunction with clinical findings and the results of other laboratory testing. We have not completed any testing of our Symphony IL-6 product candidate related to COVID-19. There is no assurance that we will be successful in obtaining EUA for this indication.

Symphony hsTNT/I and NT-proBNP

We have two other product candidates that are in development: (i) hsTNT/I for myocardial injury or myocardial infarction (MI) and (ii) NT-proBNP for cardiac heart failure (“CHF”). These product candidates will follow a similar regulatory pathway as identified for our Symphony IL-6 product candidate through distribution as an RUO followed by seeking 510(k) clearance for diagnostic use.

For the clinical trial, we plan to have both retrospective samples and prospective subjects to power the study to have a statistically significant result. For retrospectively collected samples, we will utilize clinical information recorded during the original sample collection. For prospectively collected samples, clinical information will be collected initially during admission or ER triage, and will be considered as baseline samples. Clinical information will also be collected on discharge, shift or admission to ICU. Our clinical plan also allows us to monitor ER or admitted patients during their treatment regimen.

Sales and Marketing

Initially, we plan to have four major sales territories; Northeast, Northwest, Central (South central and North central) and West (North west and South west). These territories will be served and supported by territory sales managers and technical sales support managers. A centralized sales and technical support team will support the regional groups. We intend to focus our initial sales efforts on the large institutions, hospitals, and LTACs that operate multiple facilities and therefore might purchase multiple units. This ‘Waterfall’ strategy, focusing on sales within those institutions, may lower salesforce costs.

Our sales representatives will typically have experience in molecular diagnostic testing and a network of customer contacts within their respective territories. We will utilize our teams’ knowledge along with market research databases to target and qualify our customers. We intend to execute a variety of sales campaigns and strategies to meet the buying criteria of the different customer segments we intend to pursue.

In the United States, our sales cycle will typically include customer evaluations, a decision to use our platform and then validation of our platform. Upon successful validation a hospital or reference lab may choose to become a customer. The analyzer will be available to the customer by purchase or third-party lease for their use with our diagnostic test. The customer will buy our proprietary test cartridge from us and utilize one disposable test cartridge each time they run a diagnostic test.

We have deployed the Symphony and test cartridges in the United States in selected medical institutions and LTAC facilities for evaluation. Our goal is to convert these facilities into paying customers if we receive FDA authorization.

Customers

Our initial focus is on the following types of customers:

Medical Institution and Hospitals with Intensive Care Unit (ICUs): ICUs treat patients with severe or life-threatening illnesses and injuries, which require constant care, close supervision from life support equipment and medication to ensure normal bodily functions. ICUs are staffed by highly trained physicians, nurses and respiratory therapists who specialize in caring for critically ill patients. ICUs are also distinguished from general hospital wards by a higher staff-to-patient ratio and access to advanced medical resources and equipment that is not routinely available elsewhere. The types of patients typically seen in ICUs are those with acute and advanced respiratory distress syndrome, septic shock, and patients requiring support for an acute reversible failure of one or more organs.

Long-term Acute Care facilities (LTACs): LTACs are facilities that specialize in the treatment of patients with serious medical conditions that require care on an on-going basis but no longer require intensive care or extensive diagnostic procedures. These patients are typically discharged from the intensive care units and require more care than they can receive in a rehabilitation center, skilled nursing facility, or at home. The types of patients typically seen in LTACs include those requiring prolonged ventilator use or weaning, ongoing dialysis for chronic renal failure, intensive respiratory care, multiple IV medications or transfusions, and complex wound care/care for burns.

Outpatient Clinics: A clinic (or outpatient or ambulatory care clinic) is a health care facility that is primarily focused on the care of outpatients. Clinics can be privately operated or publicly managed and funded. They typically cover the primary care needs of populations in local communities. Typical large outpatient clinics house general medical practitioners such as doctors and nurses to provide ambulatory care and some acute care services including patient triage for sepsis and cardiac patients. The types of patient care they perform include blood tests, triage with chest pain complaints, triage with septic shock, biopsies, chemotherapy, colonoscopy, CT scan, mammograms, minor surgical procedures, radiation treatments, ultrasound imaging and x-rays.

License Agreement

We have an exclusive license with Toray for the entire world, excluding Japan, to use their patents and know-how related to Symphony and the detection cartridges for the manufacturing, marketing and sale of the products (as defined in the agreement). We also have a nonexclusive license for the same purposes in Japan. The term of this license agreement extends until the expiration of all the patents associated with the licensed patent rights, which are between 2029 and 2036. If we do not generate commercial sales within five years of the date of the license, Toray has the right to terminate the agreement or make it non-exclusive. In addition, we are required to obtain market approval for the products in the United States and the European Union by October 2023. Pursuant to the agreement, we are required to use Toray to manufacture the sample cartridges. The agreement terminates upon expiration of the last of the patents included in the license.

In connection with entering into the agreement, we paid Toray an initial payment of $120,000 and are required to make an additional $120,000 prior to October 2021. We are required to pay a 15% royalty fee for the period that any underlying patents exist or for 5 years after the first sale for the licensing of this technology based on a percentage of our “Net Sales” of products using these technologies (as defined in the license agreement) with a minimum royalty of $60,000 for the initial year that royalties are payable increasing to a minimum of $100,000 thereafter.

Intellectual Property, Proprietary Technology

We do not currently hold any patents directly. We rely on a combination either directly or through our license agreement with Toray of patent, copyright, trade secret, trademark, confidentiality agreements, and contractual protection to establish and protect our proprietary rights. We have licensed U.S. Patent Nos. 8,409,447 (“the ’447 patent”) and 8,821,813 (“the ’813 patent”). The ’447 patent is valid through at least February 2029 and is generally directed to a separation chip and a method for separating an insoluble components from a suspension with the separation chip. The ’813 patent is valid through at least March 2028 and is generally directed to a liquid-feeding chip, a liquid feeding method and analysis method. We have also licensed use or process patents covering the inventions and/or subject matter of the ’447 and ’813 patents in various international territories including Japan, Canada, China, Europe and South Korea, which are valid through at least February 2027.

These measures may not be adequate to safeguard the technology underlying our products. For example, employees, consultants and others who participate in the development of our products may breach their agreements with us regarding our intellectual property, and we may not have adequate remedies for the breach. We also may not be able to effectively protect our intellectual property rights in some foreign countries, as many countries do not offer the same level of legal protection for intellectual property as the United States. Furthermore, for a variety of reasons, we may decide not to file for patent, copyright or trademark protection outside of the United States. Our trade secrets could become known through other unforeseen means. Notwithstanding our efforts to protect our intellectual property, our competitors may independently develop similar or alternative technologies or products that are equal or superior to our technology. Our competitors may also develop similar products without infringing on any of our intellectual property rights or design around our proprietary technologies. Furthermore, any efforts to enforce our proprietary rights could result in disputes and legal proceedings that could be costly and divert attention from our business. We could also be subject to third-party claims that we require additional licenses for our products, and such claims could interfere with our business. If our products infringe the intellectual property rights of others, we could face costly litigation, which could cause us to pay substantial damages and limit our ability to sell some or all of our products. Even if our products were determined not to infringe the intellectual property rights of others, we could incur substantial costs in defending any such claims.

Competition

Our primary competition is laboratory size equipment including the Roche Cobas®, Siemens ADVIA Centaur® and Beckman Coulter Access 2®.

Our competitors have substantially greater financial, technical, research and other resources and larger, more established marketing, sales and distribution organizations than we do. Our competitors also offer broader product lines and have greater brand recognition than we do. Moreover, our existing and new competitors may make rapid technological developments that may result in our technologies and products becoming obsolete before we recover the expenses incurred to develop them or before they generate significant revenue. We may encounter potential customers that, due to existing relationships with our competitors, are committed to or prefer the products offered by these competitors. There can be no assurance that competitors, many of which have made substantial investments in competing technologies, will not prevent, limit or interfere with our ability to make, use or sell our products either in the United States or in international markets.

Government Regulation

The design, development, manufacture, testing and sale of our diagnostic products are subject to regulation by numerous governmental authorities, principally the FDA, and corresponding state and foreign regulatory agencies.

FDA Regulation

Research Use Only Technologies

Symphony will initially be commercialized as an RUO tool in the United States. RUO products belong to a separate regulatory classification under a long-standing FDA regulation. From an FDA perspective, products that are intended for research use only and are labeled as RUO are not regulated by the FDA as *in vitro* diagnostic devices and are therefore not subject to the regulatory requirements discussed below for clinical diagnostic products. Thus, RUO products may be used or distributed for research use without first obtaining FDA clearance, authorization or approval. The products must bear the statement: “For Research Use Only. Not for Use in Diagnostic Procedures.” RUO products cannot make any claims related to safety, effectiveness or diagnostic utility, and they cannot be intended by the manufacturer for human clinical diagnostic use. Accordingly, a product labeled RUO but intended or promoted for clinical diagnostic use may be viewed by the FDA as adulterated and misbranded under the Federal Food, Drug, and Cosmetic Act (“FDCA”) and subject to FDA enforcement action. The FDA will consider the totality of the circumstances surrounding distribution and use of an RUO product, including how the product is marketed and to whom, when determining its intended use. If the FDA disagrees with a company’s RUO status for its product, the company may be subject to FDA enforcement activities, including, without limitation, requiring the company to seek clearance, authorization or approval for the products.

Medical Devices

Generally, *in vitro* diagnostic products we develop must be cleared by the FDA before they are marketed in the United States. Before and after approval, authorization, or clearance in the United States, our products are subject to extensive regulation by the FDA, as well as by other regulatory bodies. FDA regulations govern, among other things, the development, testing, manufacturing, labeling, safety, storage, recordkeeping, market clearance, authorization or approval, advertising and promotion, import and export, marketing and sales, and distribution of medical devices, including *in vitro* diagnostic devices ("IVDs"). IVDs are a type of medical device and include reagents and instruments used in the diagnosis or detection of diseases, conditions or infections, including, without limitation, the presence of certain chemicals or other biomarkers. Predictive, prognostic and screening tests can also be IVDs.

In the United States, medical devices are subject to varying degrees of regulatory control and are classified in one of three classes depending on the extent of controls the FDA determines are necessary to reasonably ensure their safety and effectiveness:

- Class I: general controls, such as labeling and adherence to quality system regulations;
- Class II: special controls, premarket notification (often referred to as a 510(k)), specific controls such as performance standards, patient registries, post-market surveillance, additional controls such as labeling and adherence to quality system regulations; and
- Class III: special controls and approval of a premarket approval ("PMA") application.

After a medical device is placed on the market, numerous regulatory requirements apply. These include:

- compliance with the FDA's QSR, which requires manufacturers to follow stringent design, testing, control, documentation, record maintenance, including maintenance of complaint and related investigation files, and other quality assurance controls during the manufacturing process;
- labeling regulations, which prohibit the promotion of products for uncleared, or unapproved uses, or "off-label" uses, and impose other restrictions on labeling; and
- obligations to investigate and report to the FDA adverse events, including deaths, or serious injuries that may have been or were caused by a medical device and malfunctions in the device that would likely cause or contribute to a death or serious injury if it were to recur.

Failure to comply with applicable regulatory requirements can result in enforcement action by the FDA, which may include sanctions, including but not limited to, warning letters; fines, injunctions, and civil penalties; recall or seizure of the device; operating restrictions, partial suspension or total shutdown of production; refusal to grant 510(k) clearance, *de novo* authorization, or approval of a PMA application for new devices; withdrawal of clearance, authorization, or approval; and civil or criminal prosecution.

Premarket Authorization and Notification

While most Class I and some Class II devices can be marketed without prior FDA authorization, most medical devices can be legally sold within the U.S. only if the FDA has: (i) approved a PMA application prior to marketing, generally applicable to Class III devices; or (ii) cleared the device in response to a premarket notification, or 510(k) submission, generally applicable to Class I and II devices. Some devices that have been classified as Class III are regulated pursuant to the 510(k) requirements because FDA has not yet called for PMAs for these devices. Other less common regulatory pathways to market for Class III devices include the EUA, humanitarian device exception ("HDE") or a product development protocol ("PDP").

510(k) Notification

Product development in the U.S. for most Class II and limited Class I devices typically follows a 510(k) pathway. To obtain 510(k) clearance, a manufacturer must submit a premarket notification demonstrating that the proposed device is substantially equivalent to a legally marketed device, referred to as the predicate device. A predicate device may be a previously 510(k) cleared device or a device that was in commercial distribution before May 28, 1976 for which the FDA has not yet called for submission of PMA applications. The manufacturer must show that the proposed

device has the same intended use as the predicate device, and it either has the same technological characteristics, or it is shown to be equally safe and effective and does not raise different questions of safety and effectiveness as compared to the predicate device.

There are three types of 510(k)s: traditional; special, for devices that are modified and the modification needs a new 510(k) but the modification does not affect the intended use or alter the fundamental scientific technology of the device; and abbreviated, for devices that conform to a recognized standard. The special and abbreviated 510(k)s are intended to streamline review. The FDA intends to process special 510(k)s within 30 FDA days of receipt, and abbreviated 510(k)s within 90 FDA days of receipt. The clearance pathway for traditional 510(k)s can, however, take from four to 12 months, or even longer if FDA has questions during the review.

After a device receives 510(k) clearance, any modification that could significantly affect its safety or effectiveness, or that would constitute a major change in its intended use, requires a new 510(k) clearance or could require a *de novo* authorization approval of a PMA application. The FDA requires each manufacturer to make this determination in the first instance, but the FDA can review any such decision. If the FDA disagrees with a manufacturer's decision not to seek a new 510(k) clearance, the agency may retroactively require the manufacturer to seek 510(k) clearance, *de novo* authorization, or PMA approval. The FDA also can require the manufacturer to cease marketing and/or recall the modified device until 510(k) clearance, *de novo* authorization, or PMA approval is obtained.

During the review of a 510(k) submission, the FDA may request more information or additional studies and may decide the indications for which we seek clearance should be limited. In addition, laws and regulations and the interpretation of those laws and regulations by the FDA may change in the future. We cannot foresee what effect, if any, such changes may have on us.

De Novo Classification

Devices of a new type that FDA has not previously classified based on risk are automatically classified into Class III by operation of section 513(f)(1) of the FDCA, regardless of the level of risk they pose. To avoid requiring PMA review of low- to moderate-risk devices classified in Class III by operation of law, Congress enacted section 513(f)(2) of the FDCA. This provision allows FDA to classify a low- to moderate-risk device not previously classified into Class I or II. After *de novo* authorization, an authorized device may be used as a predicate for future devices going through the 510(k) process.

PMA Application

A product not eligible for 510(k) clearance must follow the PMA approval pathway, which requires proof of the safety and effectiveness of the device to the FDA's satisfaction.

Results from adequate and well-controlled clinical trials are required to establish the safety and effectiveness of a Class III PMA device for each indication for which FDA approval is sought. After completion of the required clinical testing, a PMA including the results of all preclinical, clinical, and other testing, and information relating to the product's marketing history, design, labeling, manufacture, and controls, is prepared and submitted to the FDA.

The PMA approval process is generally more expensive, rigorous, lengthy, and uncertain than the 510(k) premarket notification process and requires proof of the safety and effectiveness of the device to the FDA's satisfaction. As part of the PMA review, the FDA will typically inspect the manufacturer's facilities for compliance with the QSR requirements, which impose elaborate testing, control, documentation and other quality assurance procedures. The FDA's review of a PMA application typically takes one to three years, but may last longer. If the FDA's evaluation of the PMA application is favorable, the FDA will issue a PMA for the approved indications, which can be more limited than those originally sought by the manufacturer. The PMA can include post-approval conditions that the FDA believes necessary to ensure the safety and effectiveness of the device including, among other things, restrictions on labeling, promotion, sale and distribution. Failure to comply with the conditions of approval can result in material adverse enforcement action, including the loss or withdrawal of the approval and/or placement of restrictions on the sale of the device until the conditions are satisfied.

Even after approval of a PMA, a new PMA or PMA supplement is required in the event of a modification to the device, its labeling or its manufacturing process. Supplements to a PMA often require the submission of the same type of information required for an original PMA, except that the supplement is generally limited to that information needed to support the proposed change from the product covered by the original PMA.

EUA Process

The process to obtain an EUA typically consists of two phases, an initial Pre-EUA submission that is used to identify and resolve any significant problems that would preclude issuance of an EUA and a final EUA submission. The final EUA submission addresses the details that the FDA will require to demonstrate that the Symphony IL-6 test will have acceptable clinical performance. FDA has granted EUA for the Roche Elecsys IL-6 test, the Siemens ADVIA Centaur IL-6 test and the Beckman Coulter Access IL-6 test. FDA publishes summaries of the testing performed to support these EUAs, which will serve as guidance as we prepare our EUA. There are no required timelines for review and authorization of an EUA.

Clinical Trials of Medical Devices

Clinical trials are almost always required to support a PMA, are often required for a de novo authorization, and are sometimes required for 510(k) clearance. Clinical trials may also be conducted or continued to satisfy post-approval requirements for devices with PMAs. Clinical studies of unapproved or uncleared medical devices or devices being studied for uses for which they are not approved or cleared (investigational devices) must be conducted in compliance with FDA requirements. If an investigational device could pose a significant risk to patients, the sponsor company must submit an Investigational Device Exemption ("IDE") application to the FDA prior to initiation of the clinical study. An IDE application must be supported by appropriate data, such as animal and laboratory test results, showing it is safe to test the device on humans and the testing protocol is scientifically sound. The IDE will automatically become effective 30 days after receipt by the FDA unless the FDA notifies the company the investigation may not begin. Clinical studies of investigational devices may not begin until an institutional review board ("IRB") has approved the study.

During any study, the sponsor must comply with the applicable portions of FDA's IDE requirements. These requirements include investigator selection, trial monitoring, adverse event reporting, and record keeping. The investigators must obtain patient informed consent, rigorously follow the investigational plan and study protocol, control the disposition of investigational devices, and comply with reporting and record keeping requirements.

A nonsignificant risk device does not require FDA approval of an IDE; however, the clinical trial must still be conducted in compliance with various requirements of FDA's IDE regulations and be approved by an IRB at the clinical trials sites. We, the FDA, or the IRB at each institution at which a clinical trial is being conducted may suspend a clinical trial at any time for various reasons, including a belief the subjects are being exposed to an unacceptable risk. During the approval, authorization, or clearance process, the FDA may inspects the records relating to the conduct of one or more investigational sites participating in the study supporting the application.

Even if a trial is completed, the results of clinical testing may not demonstrate the safety and effectiveness of the device, may be equivocal or may otherwise not be sufficient to obtain approval, authorization, or clearance of the product.

Sponsors of applicable clinical trials of devices are required to register with *www.clinicaltrials.gov*, a public database of clinical trial information. Information related to the device, patient population, phase of investigation, study sites and investigators and other aspects of the clinical trial is made public as part of the registration.

Although the QSR does not fully apply to investigational devices, the requirement for controls on design and development does apply. The sponsor also must manufacture the investigational device in conformity with the quality controls described in the IDE application and any conditions of IDE approval that the FDA may impose with respect to manufacturing.

Post-Approval Regulation of Medical Devices

After a device is cleared, authorized, or approved for marketing, numerous and pervasive regulatory requirements continue to apply. These include:

- the FDA QSR, which applies to manufacturers, developers, and contract manufacturers, and governs, among other things, how manufacturers design, test manufacture, exercise quality control over, and document manufacturing of their products;
- establishment registration and device listing

- corrections and removal reporting regulations, which require that manufactures report to FDA field corrections or removals if undertaken to reduce a risk to health posed by a device or to remedy a violation of the FDCA that may present a risk to health;
- labeling and claims regulations, which prohibit the promotion of products for unapproved or "off-label" uses and impose other restrictions on labeling; and
- the Medical Device Reporting regulation, which requires reporting to the FDA of certain adverse experience associated with use of the product.

We will continue to be subject to inspection by the FDA to determine our compliance with regulatory requirements. If the FDA finds a violation, it can institute a wide variety of enforcement actions, ranging from a public warning letter to more severe sanctions such as:

- fines, injunctions, and civil penalties;
- recall or seizure of products;
- operating restrictions, partial suspension or total shutdown of production;
- refusing requests for 510(k) clearance or PMA approval of new products;
- withdrawing 510(k) clearance or PMA approvals already granted; and
- criminal prosecution.

Adverse Event Reporting and QSR Requirements

Manufacturers of medical devices are required to comply with FDA quality system requirements set forth the QSR. The QSR requires, among other things, establishment of a quality system and processes for design and development and manufacturing controls as well as the corresponding maintenance of records and documentation. Certain adverse events and malfunctions with the product must be reported to the FDA and could result in the imposition of marketing restrictions through labeling changes or in product withdrawal. Product approvals, authorizations, or clearances may be withdrawn if compliance with regulatory requirements is not maintained or if problems concerning safety or effectiveness of the product occurs following the approval, authorization, or clearance. We will use contract manufacturers to manufacture our products for the foreseeable future. We will, therefore, be dependent on their compliance with these requirements to market our products. We work closely with our contract manufacturers to assure our products are in strict compliance with these regulations.

Export Regulations

Medical devices that are legally marketed in the United States may be exported anywhere in the world without prior FDA notification or approval. Devices that have not been approved or cleared in the United States must follow the export provisions of the FDCA. Depending on which section of the FDCA we may export under, we may need to request an export permit letter or export certificate, or we may need to submit a simple notification. Export certificates may be requested by foreign customers or foreign governments to provide proof of the products' status as regulated by the FDA. The export certificate is prepared by FDA and contains information about a product's regulatory or marketing status in the United States.

Clinical Laboratory Improvement Amendments of 1988

The use of our products is also affected by the Clinical Laboratory Improvement Amendments of 1988 ("CLIA") and related federal and state regulations, which provide for regulation of laboratory testing. Any customers using our products for clinical use in the United States will be regulated under CLIA, which establishes quality standards for all laboratory testing to ensure the accuracy, reliability and timeliness of patient test results regardless of where the test was performed. In particular, these regulations mandate that clinical laboratories must be certified by the federal government or a federally approved accreditation agency, or must be located in a state that has been deemed exempt from CLIA requirements because the state has in effect laws that provide for requirements equal to or more stringent

than CLIA requirements. Moreover, these laboratories must meet quality assurance, quality control and personnel standards, and they must undergo proficiency testing and inspections. The CLIA standards applicable to clinical laboratories are based on the complexity of the method of testing performed by the laboratory, which range from "waived" to "moderate complexity" to "high complexity."

Laboratory-developed tests.

The FDA considers LDTs to be tests that are designed, developed, validated and used within a single laboratory. The FDA historically has taken the position that it has the authority to regulate such tests as medical devices under the FDCA but has for the most part exercised enforcement discretion and has not required clearance, authorization, or approval of LDTs prior to marketing. Laboratories certified as "high complexity" under CLIA may develop, manufacture, validate and run LDTs.

In August 2020, the Department of Health and Human Services ("HHS") announced that FDA will not require premarket review of LDTs absent notice-and-comment rulemaking, and rescinded FDA guidance documents and other informal statements concerning premarket review of LDTs. The HHS announcement did not define the term LDT. In an accompanying FAQ document, HHS stated that, while LDTs are not subject to premarket review, FDA may still regulate LDTs under the Public Health Service Act. As of November 2020, HHS instructed the FDA to review voluntary EUA submissions of LDTs for COVID-19 in order to extend certain statutory immunities to liability for those laboratories under the federal Public Readiness and Emergency Preparedness Act ("PREP Act"). Failure to obtain an EUA for a COVID-19 LDT can impair such immunity and could make payor reimbursement for COVID-19 LDTs under the Family First Coronavirus Act unavailable.

Foreign Government Regulation

We intend to market our products in European and other select international markets. The regulatory pre-market requirements for molecular devices vary from country to country. Some countries impose product standards, packaging requirements, labeling requirements and import restrictions on devices. Each country has its own tariff regulations, duties and tax requirements. Failure to comply with applicable foreign regulatory requirements may subject us to fines, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, operating restrictions and criminal prosecution. For products sold in the European Economic Area, we have self-declared a Declaration of Conformity under the relevant sections of the applicable European Community standards and other normative documents.

Fraud and Abuse Regulations

We are subject to numerous federal and state health care anti-fraud laws, including the federal anti-kickback statute and False Claims Act that are intended to reduce waste, fraud and abuse in the health care industry. These laws are broad and subject to evolving interpretations. They prohibit many arrangements and practices that are lawful in industries other than health care, including certain payments for consulting and other personal services, some discounting arrangements, the provision of gifts and business courtesies, the furnishing of free supplies and services, and waivers of payments. In addition, many states have enacted or are considering laws that limit arrangements between medical device manufacturers and physicians and other health care providers and require significant public disclosure concerning permitted arrangements. These laws are vigorously enforced against medical device manufacturers and have resulted in manufacturers paying significant fines and penalties and being subject to stringent corrective action plans and reporting obligations. If we are ever accused of violating them, we could be forced to expend significant resources on investigation, remediation and monetary penalties.

Patient Protection and Affordable Care Act

Our operations will be affected by the federal Patient Protection and Affordable Care Act of 2010, as modified by the Health Care and Education Reconciliation Act of 2010, which we refer to as the Health Care Act. Among other things, the Health Care Act requires manufacturers to report to HHS detailed information about financial arrangements with physicians, teaching hospitals and certain other categories of health care providers. These reporting provisions preempt state laws that require reporting of the same information, but not those that require reports of different or additional information. Failure to comply subjects the manufacturer to significant civil monetary penalties.

Health Insurance Coverage and Reimbursement

Our ability to successfully commercialize our products candidates will depend in part on the extent to which governmental authorities, private health insurers and other third-party payors provide coverage for and establish adequate reimbursement levels for our products candidates.

In the United States, third-party payors continue to implement initiatives that restrict the use of certain technologies to those that meet certain clinical evidentiary requirements. In addition to uncertainties surrounding coverage policies, there are periodic changes to reimbursement. Third-party payors regularly update reimbursement amounts and also from time to time revise the methodologies used to determine reimbursement amounts. This includes annual updates to payments to physicians, hospitals and ambulatory surgery centers for procedures during which our products are used.

Employees

As of June 30, 2021, we have five full-time employees and one part-time employee located in Acton, Massachusetts. We also contract for hire with two outside consultants and contractors.

Facilities

We use approximately 3,700 square feet of office space at our headquarters in Acton, Massachusetts pursuant to an expense sharing agreement we have with Lana Management and Business Research International, LLC (“LMBRI”), an entity owned and controlled by Mr. Dey and Ms. Dey. Pursuant to our agreement, we reimburse LMBRI monthly for certain shared expenses, including insurance, rent, salaries, telephone, and other miscellaneous expenses. We are billed $4,000 monthly for these expenses. We believe that we will need additional office and laboratory space subsequent to the capital raise to facilitate our planned expansion.

Legal Proceedings

We are currently not a party to any pending legal proceeding, nor is our property the subject of a pending legal proceeding, that we believe is not ordinary routine litigation incidental to our business or otherwise material to the financial condition of our business.

Allereye

In June 2021, we entered into a Contribution and Assumption Agreement with a newly created and wholly owned subsidiary, Bluejay Spinco, LLC (“Spinco”), to contribute the assets related to its Allereye product to Spinco, including specifically related assets and intellectual property. We have no current plans to commercialize these assets and we do not intend to utilize any proceeds from this offering in connection with these assets.

Periodic Reporting and Audited Financial Statements

We are registering the securities offered by this prospectus under the Securities Exchange Act of 1934, as amended, and will have reporting obligations, including the requirement to file annual and quarterly reports with the SEC, following this offering. In accordance with the requirements of the Securities Exchange Act of 1934, our annual reports will contain financial statements audited and reported on by an independent registered public accounting firm.

MANAGEMENT

Executive Officers and Directors

Set forth below is a list of the names, ages as of June 30, 2021 and positions and a brief account of the business experience of the individuals who serve as our executive officers and directors as of the date of this prospectus.

Name	Age	Position
Neil (Indranil) Dey	58	President, Chief Executive Officer and Director
Gordon Kinder	41	Chief Financial Officer
Dr. Jason Cook	39	Chief Technology Officer
Kevin Vance	64	Chief Commercial Officer
Douglas C. Wurth	56	Chairman of the Board
Svetlana Dey	49	Director
Donald R. Chase	74	Director
Fred S. Zeidman	74	Director
Gary Gemignani	56	Director Nominee

Neil Dey, President, Chief Executive Officer and Director

Mr. Dey co-founded Bluejay Diagnostics in 2015. In 2008, Mr. Dey co-founded Lana Management and Business Research International, LLC (“LMBRI”), and served as Chief Operating Officer of LMBRI from 2008 through 2015. LMBRI is a management consulting company focused on product launch and marketing in the medical field in the U.S., Japan and EU. During his tenure with LMBRI, he spent approximately 8 years consulting with Toray Industries, Hitachi Chemicals (now Showa denko Materials Co. Ltd.), Fujifilm (Fuji Chemicals), Merck & Co., SRI International, among others. From 2005 to 2007, Mr. Dey served as Vice President of Business Development and Market for Definines, AG. From 2001 to 2005, Mr. Dey served as Head of Business Development, Western U.S. for IMPATH, Inc., where he was responsible for three business units and the introduction of Her2neu diagnostics for breast cancer treatment with Herceptin. Earlier positions include Chief Business Officer for Genmethrax, Inc.; Manager, Technology Licensing, Thomas Jefferson Medical University; Manager, Technology Licensing, Ciba Geigy (Novartis). Mr. Dey earned both Bachelor of Science and Master of Science degrees in Biochemistry from Visva-Bharati University in India and a Ph.D. in Lipid Membrane Biochemistry from Biological Research Center in Hungary. He also earned a Masters in Business Administration (Fulbright Scholarship) from the University of Cambridge. We believe Mr. Dey’s history with our company, coupled with his extensive business development experience in the medical device industry, provide him with the qualifications to serve as a director.

Gordon Kinder, Chief Financial Officer

Mr. Kinder joined us in 2021. Mr. Kinder founded Capella Financial Services, an accounting and financial services firm in 2008. In connection with the services provided by Capella Financial Services, Mr. Kinder served as part-time chief financial officer of Passport Systems, Inc., which filed a petition in the United States Bankruptcy Court for the District of Massachusetts in November 2020 under Chapter 7 of the U.S. Bankruptcy Code. From 2013 to 2017, Mr. Kinder was Senior Director, Treasurer and Controller for Blue Sky Biotech through its acquisition by LakePharma, Inc. From 2012 to 2013, Mr. Kinder was Director of Finance and Controller for Building Engines, Inc. and from 2010 to 2011 he was Senior Financial Analyst for Vantage Travel Services. Mr. Kinder started his career at Ernst & Young, LLP where he was employed from 2005 to 2008. Mr. Kinder earned a Bachelor of Arts in History from Kenyon College and Master of Business Administration and Master of Science in Accounting degrees from Northeastern University.

Dr. Jason Cook, Chief Technology Officer

Dr. Cook joined us in 2021. From 2014 to 2021, Dr. Cook served as the chief executive officer of NanoHybrids, Inc., a nanotechnology company specializing in the development and manufacture of theranostic nanoparticle platform technologies. He was also a director and served as chairman of its board from 2020 to 2021, and from 2014 to 2017, he served as senior scientist developing many of the core technologies of the company. Dr. Cook earned a Ph.D.

in Biomedical Engineering from University of Texas at Austin focusing on medical diagnostic system design and development. His postdoctoral work focused on the improvement of bioconjugation strategies of nanoparticles for molecular targeting. Dr. Cook also serves as an ad-hoc reviewer for numerous panels at the National Institute of Health and peer reviewed scientific journals.

Kevin Vance, Chief Commercial Officer

Mr. Vance joined us in 2021. Prior to that, Mr. Vance served as Chief Business Development Executive for Vibra Healthcare from 2016 to 2018, an operator of 46 long term acute care hospitals. From 2013 to 2016, Mr. Vance was Director of Business Development for the Commercial Division at Lifebridge Health Systems, which was converting multiple hospital and entities into an Accountable Care Organization (ACO) system. He was responsible for joint ventures and the expansion of commercial services, including Urgent Care, Outpatient Surgery, Out Patient Physical Therapy, Sleep Centers, Homecare and Retail Pharmacy among others. Prior to Lifebridge Health he was Senior Executive Director of Business Development and Marketing for UMass Memorial Healthcare, a seven hospital system, from 2005 to 2011. Mr. Vance earned a Masters of Business Administration degree in Finance from Western New England College and a Bachelor of Science degree in Industrial Engineering and Operations Research from the University of Massachusetts.

Douglas C. Wurth, Chairman of the Board

Mr. Wurth has served as Chairman of the Board of Bluejay Diagnostics since 2017. Since 2016, Mr. Wurth has been a private investor. Mr. Wurth has served as Chief Executive Officer and a Director of Good Works II Acquisition Corp. since February 2021, and Co- Chairman of Good Works Acquisition Corp. since October 2020. Mr. Wurth led major businesses within J.P. Morgan Asset Management during his nearly 20 years at J.P Morgan from 1997 to 2016. Mr. Wurth was the Chief Executive Officer of Alternative Investments in Asset Management, and Chief Executive Officer of J.P. Morgan's International Private Bank, where he led the expansion of the franchise in Asia, Latin America and Europe while based in New York, Hong Kong, and London. Since leaving J.P. Morgan Mr. Wurth has invested in and helped lead several private companies, of which he is Chairman of the Board of Standard Power and Vestrata, and a board member of Triax Technologies. Before joining J.P. Morgan, Mr. Wurth practiced law at the New York firm Skadden, Arps, Slate, Meagher & Flom from 1992 to 1995, and served as General Counsel to former U.S. Senator Robert Dole's 1996 presidential campaign. Mr. Wurth earned a Bachelor of Arts degree from the University of Notre Dame and a J.D. from the University of Virginia School of Law. We believe that Mr. Wurth is well qualified to serve on our board of directors due to his overall leadership experience, his experience in the private equity and alternative investments industry and his legal experience.

Donald R. Chase, Director

Mr. Chase has served as on our Board of Directors since 2017. Mr. Chase has been a member of Board of Directors of Merchants Bank and Merchants Bancshares, Inc., in South Burlington. VT, from 2015 through 2017. Mr. Chase was Chairman of the Board of NUVO Bank and Trust Company of Springfield, Massachusetts since its inception in 2008 through 2015. Mr. Chase served as President and Chief Executive Officer, Vice Chairman, and a Director of Westbank Corporation and its wholly-owned subsidiary, Westbank from 1988 to 2007. Mr. Chase is active in a number of commercial real estate, farming and ranching activities and serves in a number of civic roles. He is Chairman of the Board of Trustees for the Eastern States Exposition in West Springfield, MA and a Trustee of the Big E Trust. Mr. Chase is also a commissioner of the Board of Public Safety for the City of West Springfield, MA and is a member to the Massachusetts Board of Agriculture. Mr. Chase is a veteran of the United States Army during which he served in combat in Vietnam from 1967 through 1969. Mr. Chase graduated with honors from Western New England University with a Bachelor of Science degree in Accounting. We believe that Mr. Chase is well qualified to serve on our board of directors due to his executive experience and his financial experience.

Fred S. Zeidman, Director

Mr. Zeidman has served on our Board of Directors since May 2021. Mr. Zeidman is Chairman of WoodRock & Co., an investment banking service business and serves as Chairman and CEO of Good Works Acquisition Corp. and Chairman of Good Works II Acquisition Corp, both publicly held SPACs and Mr. Zeidman served as Chairman of Gordian Group LLC, a U.S. investment bank specializing in board level advice in complex,

distressed or “story” financial matters. Mr. Zeidman, Chairman Emeritus of the United States Holocaust Memorial Council was appointed by President George W. Bush in March 2002 and served in that position from 2002-2010. A prominent Houston based business and civic leader; Mr. Zeidman also is Chairman Emeritus of the University of Texas Health Science System Houston. He is formerly National Chairman of the Development Corp of Israel Campaign (Israel Bonds) and served on the Board of the National World War II Museum. Mr. Zeidman was the former CEO, President and Chairman of Seitel, Inc., a Houston-based onshore seismic data provider where he was instrumental in the successful turnaround of the Company. He served as lead Director of Straight Path Communications, Inc. until its sale to Verizon in 2018. He was also Director of REMA a division of NRG Corp. and he further serves on the board of Prosperity Bank and was formerly Restructuring Officer of TransMeridian Exploration Inc. and Chief Bankruptcy Trustee of AremisSoft Corp. He held the post of Chairman of the Board and CEO of Unibar Corporation, the largest domestic independent drilling fluids company, until its sale to Anchor Drilling Fluids in 1992. Mr. Zeidman holds a Bachelor’s degree from Washington University in St. Louis and a Master’s in Business Administration from New York University. We believe that Mr. Zeidman is well qualified to serve on our board of directors due to his extensive leadership and corporate finance experience, as well has his extensive relationships in the investing and investment banking businesses.

Svetlana Dey, Director

Ms. Svetlana Dey has been member of Bluejay’s Board of Directors since 2015. Ms. Dey co-founded Bluejay Diagnostics in 2015. She also co-founded LMBRI in 2008, a management consulting company focused on product launch and marketing in the medical field in the U.S., Japan and India. Ms. Dey has served as LMBRI’s President and CEO since 2008. Ms. Dey is a Board Member of Laminar Pharma, Inc. Prior to LMBRI, Ms. Dey spent more than 15 years in healthcare consulting businesses. In these roles, she has been involved in management and operations of healthcare and life sciences products development, sales & marketing operations and general management for more than 12 years. Ms. Dey earned a Masters Degree in Mathematics from the State University of Mari El Republic, Russia. We believe Ms. Dey’s history with our company, coupled with her extensive experience in the healthcare industry, provide her with the qualifications to serve as a director.

Gary Gemignani, Director Nominee

Mr. Gemignani will join our Bluejay’s Board of Directors upon the closing of this offering. Mr. Gemignani has served as EVP, Chief Financial Officer of Acacia Pharma Group plc, a hospital pharmaceutical company since January 2020. Prior to Acacia Pharma, Mr. Gemignani served as CFO of Synergy Pharmaceuticals Inc. from 2017 to 2019 where he successfully led the sale of this Nasdaq-listed company’s assets to Bausch Health. Synergy Pharmaceuticals Inc. filed a petition in the United States Bankruptcy Court for the Southern District of New York in December 2018 under Chapter 11 of the U.S. Bankruptcy Code. Previously, Mr. Gemignani served as CEO and CFO of Biodel Inc., overseeing business and strategic planning, operations and financing activities of the company. Prior to this, Mr. Gemignani served in senior and executive financial and operational roles with multiple public and private companies including, Prudential Financial, Gentium, Novartis and Wyeth. Mr. Gemignani started his career at Arthur Andersen & Co. We believe that Mr. Gemignani is well qualified to serve on our board of directors due to his extensive public company experience, as well as his accounting and financial experience.

Family Relationships

Ms. Svetlana Dey is married to Mr. Neil Dey.

Director Independence

Our Board of Directors has determined that Messrs. Wurth, Chase, Zeidman, and Gemignani would each be considered an “independent director” under the Nasdaq listing rules, which is defined generally as a person other than an executive officer or employee of ours who does not have a relationship that, in the opinion of our Board of Directors, would interfere with the director’s exercise of independent judgment in carrying out the responsibilities of a director. Our independent directors together constitute a majority of our full Board of Directors. Our independent directors will have regularly scheduled meetings at which only independent directors are present.

Board Leadership Structure and Role in Risk Oversight

Our Board of Directors recognizes that one of its key responsibilities is to evaluate and determine its optimal leadership structure so as to provide effective oversight of management.

Although management is responsible for the day-to-day management of the risks we face, our Board of Directors and its committees will take an active role in overseeing management of our risks and have the ultimate responsibility for the oversight of risk management. The Board of Directors will regularly review information regarding our operational, financial, legal and strategic risks. Specifically, senior management will attend periodic meetings of the Board of Directors, provide presentations on operations including significant risks, and will be available to address any questions or concerns raised by our Board of Directors.

In addition, we expect that committees will assist the Board of Directors in fulfilling its oversight responsibilities regarding risks. The Audit Committee will coordinate the Board of Directors' oversight of our internal control over financial reporting, disclosure controls and procedures, related party transactions and code of conduct and corporate governance guidelines and management will regularly report to the Audit Committee on these areas. The Compensation Committee will assist the Board in fulfilling its oversight responsibilities with respect to the management of risks arising from our compensation policies and programs. When any of the committees receives a report related to material risk oversight, the chairperson of the relevant committee will report on the discussion to the full Board of Directors.

Board Committees

Prior to the closing of this offering, our Board of Directors will have three standing committees: an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. Each of the Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee will have a written charter, which will be available on our corporate website.

Audit Committee

We have established an Audit Committee of the Board of Directors, which consists of Messrs. Wurth and Chase. Mr. Chase is the current chairperson of the Audit Committee. Upon the closing of this offering, Mr. Gemignani will join the Audit Committee and serve as chairperson of the Audit Committee. Each of Messrs. Wurth, Chase and Gemignani are independent directors under the Nasdaq listing standards applicable to audit committees. Our Audit Committee oversees our corporate accounting, financial reporting practices and the audits of financial statements. The Audit Committee consists exclusively of directors who are financially literate. In addition, Mr. Gemignani is considered an "audit committee financial expert" as defined by the SEC's rules and regulations.

The Audit Committee's duties, which are specified in the Audit Committee charter, include, but are not limited to:

- reviewing and discussing with management and the independent auditor the annual audited financial statements, and recommending to the Board of Directors whether the audited financial statements should be included in our Form 10-K;
- discussing with management and the independent auditor significant financial reporting issues and judgments made in connection with the preparation of our financial statements;
- discussing with management major risk assessment and risk management policies;
- monitoring the independence of the independent auditor;
- verifying the rotation of the lead (or coordinating) audit partner having primary responsibility for the audit and the audit partner responsible for reviewing the audit as required by law;
- reviewing and approving all related-party transactions;
- pre-approving all audit services and permitted non-audit services to be performed by our independent auditor, including the fees and terms of the services to be performed;
- appointing or replacing the independent auditor;

- determining the compensation and oversight of the work of the independent auditor (including resolution of disagreements between management and the independent auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work; and
- establishing procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal accounting controls or reports which raise material issues regarding our financial statements or accounting policies.

Compensation Committee

We have established a Compensation Committee of the Board of Directors which consists Messrs. Wurth, Chase and Gemignani, each of whom is an independent director under the NASDAQ Stock Market listing standards applicable to compensation committees. Mr. Chase serves as chairperson of the Compensation Committee. The Compensation Committee's duties, which are specified in our Compensation Committee charter, include, but are not limited to:

- reviewing and approving on an annual basis the corporate goals and objectives relevant to our principal executive officer's compensation, evaluating our principal executive officer's performance in light of such goals and objectives and determining and approving the remuneration (if any) of our principal executive officer based on such evaluation;
- reviewing and approving the compensation of all of our other executive officers;
- reviewing our executive compensation policies and plans;
- implementing and administering our incentive compensation equity-based remuneration plans;
- assisting management in complying with our proxy statement and annual report disclosure requirements;
- approving all special perquisites, special cash payments and other special compensation and benefit arrangements for our executive officers and employees;
- if required, producing a report on executive compensation to be included in our annual proxy statement; and
- reviewing, evaluating and recommending changes, if appropriate, to the remuneration for directors.

The charter will also provide that the Compensation Committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, legal counsel or other adviser and will be directly responsible for the appointment, compensation and oversight of the work of any such adviser. However, before engaging or receiving advice from a compensation consultant, external legal counsel or any other adviser, the Compensation Committee will consider the independence of each such adviser, including the factors required by the NASDAQ Stock Market and the SEC.

Nominating and Corporate Governance Committee

We have established a Nominating and Corporate Governance Committee of the Board of Directors, which consist of Messrs. Wurth, Chase and Zeidman, each of whom is an independent director under the NASDAQ Stock Market listing standards applicable to nominating committees. Mr. Wurth is the chairperson of the Nominating and Corporate Governance Committee. The Nominating and Corporate Governance Committee is responsible for overseeing the selection of persons to be nominated to serve on our Board of Directors. The Nominating and Corporate Governance Committee considers persons identified by its members, management, stockholders, investment bankers and others.

Code of Ethics

Prior to the closing of this offering, we will adopt a written code of business conduct and ethics that will apply to our directors, officers and employees, including our principal executive officer, principal financial officer and principal accounting officer or controller, or persons performing similar functions. The full text of our code of business conduct and ethics will be posted on our corporate website and is filed as an exhibit to this registration statement. We intend to disclose future amendments to certain provisions of our code of business conduct and ethics, or waivers of these provisions, on our corporate website or in filings under the Exchange Act.

Limitation of Directors Liability and Indemnification

The Delaware General Corporation Law authorizes corporations to limit or eliminate, subject to certain conditions, the personal liability of directors to corporations and their stockholders for monetary damages for breach of their fiduciary duties. Our amended and restated certificate of incorporation will limit the liability of our directors to the fullest extent permitted by Delaware law.

We propose to purchase director and officer liability insurance to cover liabilities our directors and officers may incur in connection with their services to us, including matters arising under the Securities Act. Our amended and restated certificate of incorporation and by-laws also will provide that we will indemnify our directors and officers to the fullest extent permitted by Delaware law. Our amended and restated by-laws will further provide that we will indemnify any other person whom we have the power to indemnify under Delaware law. In addition, we intend to enter into customary indemnification agreements with each of our officers and directors.

There is no pending litigation or proceeding involving any of our directors, officers, employees or agents in which indemnification will be required or permitted. We are not aware of any threatened litigation or proceedings that may result in a claim for such indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, executive officers or persons controlling us, we have been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Director Compensation

During the year ended December 31, 2020, none of our non-employee directors were paid any amounts as compensation for serving on our Board of Directors, other than Mr. Wurth who has received health insurance in the amount of $19,881.

Upon the closing of this offering, our Board of Directors has approved a new compensation plan for our non-employee directors, pursuant to which such directors will be entitled to annual cash fees of $40,000 plus $10,000 for the Chairman of the Board. Each member of the Audit Committee and Compensation Committee will receive an annual fee of $5,000, with the chairperson receiving $10,000. Each member of the Nominating and Governance Committee will receive an annual fee of $2,500, with the chairperson receiving $5,000. In addition, our non-employee directors will receive an annual stock option grant of a number of shares equal to $50,000 divided by the market price on the date of grant subject to a one-year vesting period.

Upon his appointment, Mr. Zeidman was issued an option to purchase 10,000 shares of our common stock at an exercise price of $3.50 per share. In addition, Mr. Zeidman also began receiving the cash compensation set forth in the preceding paragraph effective upon his appointment.

EXECUTIVE COMPENSATION

The following table shows the compensation awarded to or earned in the last two fiscal years by our chief executive officer. We did not have any officers that received more than $100,000 in compensation during 2020.

Summary Compensation Table - 2020

Name and Principal Position	Year	Salary ($)	Total ($)
Neil Dey, Chief Executive Officer and President	2020	20,833	20,833

Employment Agreements

Neil Dey, Chief Executive Officer and President

In July 2021, we entered into an employment agreement with Neil Dey pursuant to which Mr. Dey agreed to serve as our Chief Executive Officer and President. The agreement provides for an initial annual salary of $250,000, which shall increase to $350,000 upon the closing of this offering. Mr. Dey may receive an annual bonus, provided that the final determination on the amount of the annual bonus, if any, will be made by the Compensation Committee of the Board of Directors, based on criteria established by the Compensation Committee. The targeted annual bonus for 2021 is 50% of Mr. Dey's base salary, and is payable in a combination of cash and options to purchase our common stock, as determined in the sole discretion of the Compensation Committee. If Mr. Dey's employment is terminated at our election without "cause" (as defined in the agreement), Mr. Dey shall be entitled to receive severance payments equal to twelve months of Mr. Dey's base salary and he shall also receive a pro rata portion of the target annual bonus for such year.

Gordon Kinder, Chief Financial Officer

In July 2021, we entered into an employment agreement with Gordon Kinder pursuant to which Mr. Kinder agreed to serve as our Chief Financial Officer and Vice President. The agreement provides for an initial annual salary of $232,000, which shall increase to $250,000 upon the closing of this offering. Mr. Kinder may receive an annual bonus, provided that the final determination on the amount of the annual bonus, if any, will be made by the Compensation Committee of the Board of Directors, based on criteria established by the Compensation Committee. The targeted annual bonus for 2021 is 40% of Mr. Kinder's base salary, and is payable in a combination of cash and options to purchase our common stock, as determined in the sole discretion of the Compensation Committee. Pursuant to the agreement, Mr. Kinder was granted a ten-year option to purchase 40,000 shares of common stock at an exercise price of $3.50 per share. The option vests in four installments of 6,667 shares on December 31, 2021; 6,666 shares on July 7, 2022; 13,333 shares on July 7, 2023; and 13,334 shares on July 7, 2024, provided Mr. Kinder is employed on such vesting date. If Mr. Kinder's employment is terminated at our election without "cause" (as defined in the agreement), Mr. Kinder shall be entitled to receive severance payments equal to three months (increasing to six months if such termination occurs after one year) of Mr. Kinder's base salary and he shall also receive a pro rata portion of the target annual bonus for such year.

Jason Cook, Chief Technology Officer

In July 2021, we entered into an employment agreement with Jason Cook pursuant to which Dr. Cook agreed to serve as our Chief Technology Officer. The agreement provides for an initial annual salary of $200,000. Dr. Cook may receive an annual bonus, provided that the final determination on the amount of the annual bonus, if any, will be made by the Compensation Committee of the Board of Directors, based on criteria established by the Compensation Committee. The targeted annual bonus for 2021 is 30% of Dr. Cook's base salary, and is payable in a combination of cash and options to purchase our common stock, as determined in the sole discretion of the Compensation Committee. Dr. Cook is also entitled to receive a $30,000 relocation allowance if he relocates to the Acton town area within 18 months. Pursuant to the agreement, Dr. Cook was granted a ten-year option to purchase 75,000 shares of common stock at an exercise price of $3.50 per share. 41,668 shares underlying the option vested immediately and the remainder of the option vests in four equal installments based on the achievement of various milestones set forth in the agreement, provided Dr. Cook is employed on each such vesting date. If Dr. Cook's employment is terminated at our election without "cause" (as defined in the agreement), Dr. Cook shall be entitled to receive severance payments equal to three months (increasing to six months if such termination occurs after one year) of Dr. Cook's base salary and he shall also receive a pro rata portion of the target annual bonus for such year.

Kevin Vance, Chief Commercial Officer

In July 2021, we entered into an employment agreement with Kevin Vance pursuant to which Mr. Vance agreed to serve as our Chief Commercial Officer. The agreement provides for an initial annual salary of $200,000. Mr. Vance may receive an annual bonus, provided that the final determination on the amount of the annual bonus, if any, will be made by the Compensation Committee of the Board of Directors, based on criteria established by the Compensation Committee. The targeted annual bonus for 2021 is 30% of Mr. Vance's base salary, and is payable in a combination of cash and options to purchase our common stock, as determined in the sole discretion of the Compensation Committee. Mr. Vance is also entitled to receive a $600 per month automobile allowance. Pursuant to the agreement, Mr. Vance was granted a ten-year option to purchase 55,000 shares of common stock at an exercise price of $3.50 per share vesting as follow: (i) 5,000 shares vested immediately; (ii) 30,000 shares shall vest upon the successful closing of this offering; (iii) 10,000 shares shall vest if and when Mr. Vance acquires a customer for us and the customer completes a LDT; and (iv) 10,000 shares shall vest if Mr. Vance procures customer orders for sales in the aggregate of $1.5 million; provided Mr. Vance is employed on each such vesting date. If Mr. Vance's employment is terminated at our election without "cause" (as defined in the agreement), Mr. Vance shall be entitled to receive severance payments equal to three months (increasing to six months if such termination occurs after one year) of Mr. Vance's base salary and he shall also receive a pro rata portion of the target annual bonus for such year. In addition to the amounts payable to Mr. Vance pursuant to the agreement, we intend to enter into a sales commission agreement with Mr. Vance pursuant to which Mr. Vance will be entitled to receive additional compensation based on our sales.

2021 Stock Plan

In July 2021, we adopted the Bluejay Diagnostics, Inc. 2021 Stock Plan, or 2021 Plan. The 2021 Plan is a stock-based compensation plan that provides for discretionary grants of stock options, stock awards, stock unit awards and stock appreciation rights to key employees, non-employee directors and consultants. The following is a summary of the material features of the 2021 Plan.

Administration. The 2021 Plan is administered by either the Compensation Committee of our Board of Directors or our entire Board of Directors for the period prior to the establishment of our Compensation Committee (we refer to the body administering the 2021 Plan as the "Committee"). The Committee has full authority to select the individuals who will receive awards under the 2021 Plan, determine the form and amount of each of the awards to be granted and establish the terms and conditions of awards.

Limit on Non-Employee Director Compensation. Under the 2021 Plan, the aggregate value of all compensation granted or paid to any individual for service as a non-employee director with respect to any calendar year, including awards granted under the 2021 Plan and cash fees paid to such non-employee director, will not exceed $300,000 in total value. For purposes of this limitation, the value of awards is calculated based on the grant date fair value of such awards for financial reporting purposes.

Number of Shares of Common Stock. The number of shares of the common stock that may be issued under the 2021 Plan is 1,960,000.

Shares issuable under the 2021 Plan may be authorized but unissued shares or treasury shares. If there is a lapse, forfeiture, expiration, termination or cancellation of any award made under the 2021 Plan for any reason, the shares subject to the award will again be available for issuance. Any shares subject to an award that are delivered to us by a participant, or withheld by us on behalf of a participant, as payment for an award or payment of withholding taxes due in connection with an award will not again be available for issuance, and all such shares will count toward the number of shares issued under the 2021 Plan. Shares purchased by us with the proceeds received from a stock option exercise will not be available again for issuance. The number of shares of common stock issuable under the 2021 Plan is subject to adjustment, in the event of any reorganization, recapitalization, stock split, stock distribution, merger, consolidation, split-up, spin-off, combination, subdivision, consolidation or exchange of shares, any change in the capital structure of the company or any similar corporate transaction. In each case, the Committee has the discretion to make adjustments it deems necessary to preserve the intended benefits under the 2021 Plan. No award granted under the 2021 Plan may be transferred, except by will, the laws of descent and distribution.

Of the shares available for issuance: (i) the maximum number issuable as stock options or stock appreciation rights to any employee in any calendar year is 250,000, and (ii) the maximum number of shares issuable as stock awards or such units granted to any employee in any calendar year is 250,000.

Eligibility. All employees designated as key employees for purposes of the 2021 Plan, all non-employee directors and consultants are eligible to receive awards under the 2021 Plan.

Awards to Participants. The 2021 Plan provides for discretionary awards of stock options, stock awards, stock unit awards and stock appreciation rights to participants. Each award made under the 2021 Plan will be evidenced by a written award agreement specifying the terms and conditions of the award as determined by the Committee in its sole discretion, consistent with the terms of the 2021 Plan.

Stock Options. The Committee has the discretion to grant non-qualified stock options or incentive stock options to participants and to set the terms and conditions applicable to the options, including the type of option, the number of shares subject to the option and the vesting schedule; provided that, commencing as of the initial public offering of our common stock, the exercise price of each stock option will be the closing price of the common stock on the date on which the option is granted ("fair market value"), each option will expire ten years from the date of grant and no dividends or dividend equivalents may be paid with respect to stock options.

In addition, an incentive stock option granted to a key employee is subject to the following rules: (i) the aggregate fair market value (determined at the time the option is granted) of the shares of common stock with respect to which incentive stock options are exercisable for the first time by a key employee during any calendar year (under all incentive stock option plans of the company and its subsidiaries) cannot exceed $100,000, and if this limitation is exceeded, that portion of the incentive stock option that does not exceed the applicable dollar limit will be an incentive stock option and the remainder will be a non-qualified stock option; (ii) if an incentive stock option is granted to a key employee who owns stock possessing more than 10% of the total combined voting power of all classes of stock of the company, the exercise price of the incentive stock option will be 110% of the closing price of the common stock on the date of grant and the incentive stock option will expire no later than five years from the date of grant; and (iii) no incentive stock option can be granted after ten years from the earlier of the date the 2021 Plan was adopted or approved by stockholders.

Stock Appreciation Rights. The Committee has the discretion to grant stock appreciation rights to participants. The Committee determines the exercise price for a stock appreciation right, which cannot be less than 100% of the fair market value of our common stock on the date of grant. Upon the exercise of a stock appreciation right, we will pay the participant in common stock or in cash, at our discretion, an amount equal to the product of (1) the excess of the per share fair market value of our common stock on the date of exercise over the exercise price, multiplied by (2) the number of shares of common stock with respect to which the stock appreciation right is exercised. The Committee has the discretion to set the terms and conditions applicable to the award, including the number of shares subject to the stock appreciation right and the vesting schedule, provided that each stock appreciation right will expire not more than ten years from the date of grant and no dividends or dividend equivalents shall be paid with respect to any stock appreciation right prior to the exercise of the stock appreciation right.

Stock Awards. The Committee has the discretion to grant stock awards to participants. Stock awards will consist of shares of common stock granted without any consideration from the participant or shares sold to the participant for appropriate consideration as determined by the Board. The number of shares awarded to each participant, and the restrictions, terms and conditions of the award, will be at the discretion of the Committee. Subject to the restrictions, a participant will be a shareholder with respect to the shares awarded to him or her and will have the rights of a shareholder with respect to the shares, including the right to vote the shares and receive dividends on the shares; provided that dividends otherwise payable on any stock award subject to restrictions will be held by us and will be paid to the holder of the stock award only to the extent the restrictions on such stock award lapse.

Stock Units. The Committee has the discretion to grant stock unit awards to participants. Each stock unit entitles the participant to receive, on a specified date or event set forth in the award agreement, one share of common stock or cash equal to the fair market value of one share on such date or event, as provided in the award agreement. The number of stock units awarded to each participant, and the terms and conditions of the award, will be at the discretion of the Committee. Unless otherwise specified in the award agreement, a participant will not be a shareholder with respect to the stock units awarded to him prior to the date they are settled in shares of common stock. The award agreement may provide that until the restrictions on the stock units lapse, the participant will be paid an amount equal to the dividends that would have been paid had the stock units been actual shares; provided that such dividend equivalents will be held by us and paid only to the extent the restrictions lapse.

Payment for Stock Options and Withholding Taxes. The Committee may make one or more of the following methods available for payment of any award, including the exercise price of a stock option, and for payment of the tax obligation associated with an award: (i) cash; (ii) cash received from a broker dealer to whom the holder has submitted an exercise notice together with irrevocable instructions to deliver promptly to us the amount of sales proceeds from the sale of the shares subject to the award to pay the exercise price or withholding tax; (iii) by directing us to withhold shares of common stock otherwise issuable in connection with the award having a fair market value equal to the minimum amount required to be withheld; and (iv) by delivery of previously acquired shares of common stock that are acceptable to the Committee and that have an aggregate fair market value on the date of exercise equal to the exercise price or withholding tax, or certification of ownership by attestation of such previously acquired shares.

Provisions Relating to a "Change in Control" of the Company. Notwithstanding any other provision of the 2021 Plan or any award agreement, in the event of a "Change in Control" of the Company, the Board has the discretion to provide that all outstanding awards will become fully exercisable, all restrictions applicable to all awards will terminate or lapse, and performance goals applicable to any stock awards will be deemed satisfied at the highest level. In addition, upon such Change in Control, the Committee has sole discretion to provide for the purchase of any outstanding stock option for cash equal to the difference between the exercise price and the then fair market value of the common stock subject to the option had the option been currently exercisable, make such adjustment to any award then outstanding as the Committee deems appropriate to reflect such Change in Control and cause any such award then outstanding to be assumed by the acquiring or surviving corporation after such Change in Control.

Amendment of Award Agreements; Amendment and Termination of the 2021 Plan; Term of the 2021 Plan. The Committee may amend any award agreement at any time, provided that no amendment may adversely affect the right of any participant under any agreement in any material way without the written consent of the participant, unless such amendment is required by applicable law, regulation or stock exchange rule.

The Board may terminate, suspend or amend the 2021 Plan, in whole or in part, from time to time, without the approval of the stockholders, unless such approval is required by applicable law, regulation or stock exchange rule, and provided that no amendment may adversely affect the right of any participant under any outstanding award in any material way without the written consent of the participant, unless such amendment is required by applicable law, regulation or rule of any stock exchange on which the shares are listed.

Notwithstanding the foregoing, neither the 2021 Plan nor any outstanding award agreement can be amended in a way that results in the repricing of a stock option. Repricing is broadly defined to include reducing the exercise price of a stock option or stock appreciation right or cancelling a stock option or stock appreciation right in exchange for cash, other stock options or stock appreciation rights with a lower exercise price or other stock awards. (This prohibition on repricing without stockholder approval does not apply in case of an equitable adjustment to the awards to reflect changes in the capital structure of the company or similar events.

No awards may be granted under the 2021 Plan on or after the tenth anniversary of the initial effective date of the 2021 Plan.

PRINCIPAL STOCKHOLDERS

The following table sets forth information regarding the beneficial ownership of our common stock as of the date of this prospectus by:

- each person known by us to be the beneficial owner of more than 5% of our outstanding shares of common stock;
- each of our named executive officers, directors and director nominees; and
- all our executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the securities. Except as otherwise indicated, each person or entity named in the table has sole voting and investment power with respect to all shares of our capital shown as beneficially owned, subject to applicable community property laws.

In computing the number and percentage of shares beneficially owned by a person, shares that may be acquired by such person within 60 days of the date of this prospectus are counted as outstanding, although such shares are not counted as outstanding for computing the percentage ownership of any other person. The percentage of shares beneficially owned before the offering is computed on the basis of 10,534,265 shares of our common stock outstanding immediately prior to the date of this prospectus. The percentage of shares beneficially owned after the offering assumes the representative does not exercise the option to purchase additional shares to cover over-allotments. Unless otherwise indicated, the address of each person listed below is c/o Bluejay Diagnostics, Inc., 360 Massachusetts Avenue, Suite 203, Acton, MA 01720.

Name of Beneficial Owner	Shares of Common Stock Beneficially Owned	Percent of Common Stock Beneficially Owned Prior to Offering	Percent of Common Stock Beneficially Owned After Offering
Executive officers and directors:			
Neil (Indranil) Dey	4,540,148(1)	43.1%	36.8%
Gordon Kinder	—	—	—
Dr. Jason Cook	41,668(2)	*	*
Kevin Vance	35,000(2)	*	*
Svetlana Dey	4,091,356(1)	38.8%	33.2%
Douglas C. Wurth	3,463,450(3)	32.4%	27.7%
Donald R. Chase	839,312(4)	7.9%	6.8%
Fred S. Zeidman	—	—	—%
Gary Gemignani	—	—	—
All Executive Officers and Directors as a group (9 persons)	8,919,578	82.2%	70.5%

* Less than 1%.

(1) Of the amounts set forth in the table, 4,091,356 shares are held by Lana Management & Business Research International, LLC, an entity owned by Mr. Dey and Ms. Dey. Ms. Dey has voting and dispositive power over the shares held by such entity.

(2) Consists of shares underlying options at an exercise price of $3.50 per share.

(3) Includes (i) 39,340 shares underlying options at an exercise price of $0.16 per share and 59,010 shares at an exercise price of $0.95, and (ii) 62,000 shares underlying warrants at an exercise price of $2.30 per share and 7,868 shares underlying warrants at an exercise price of $0.95 per share.

(4) Includes (i) 39,340 shares underlying options at an exercise price of $0.16 per share and 11,802 shares at an exercise price of $0.95 per share, and (ii) 22,818 shares underlying warrants at an exercise price of $2.30 per share.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

We are a party to an expense sharing agreement with LMBRI, an entity owned and controlled by Mr. Dey and Ms. Dey, pursuant to which we reimburse LMBRI monthly for certain shared expenses, including insurance, rent, salaries, telephone, and other miscellaneous expenses. We are billed up to $4,000 monthly for these expenses. During each of the years ended December 31, 2020 and 2019, we paid or accrued to LMBRI $48,000 for these shared expenses.

Since our inception, LMBRI has advanced funds on our behalf for operational purposes and for FDA pre-submission funding purposes. As of December 31, 2020 and 2019, the amounts payable to LMBRI were $125,102 and $86,005, respectively. The outstanding balance due to LMBRI is payable upon demand.

Related Party Transactions — Policies

Related party transactions are defined under SEC rules as transactions in which (1) the aggregate amount involved will or may be expected to exceed the lesser of $120,000 or one percent of the average of our total assets for the last two completed fiscal years, (2) we or any of our subsidiaries is a participant, and (3) any (a) executive officer, director or nominee for election as a director, (b) greater than 5% beneficial owner of our shares of common stock, or (c) immediate family member, of the persons referred to in clauses (a) and (b), has or will have a direct or indirect material interest (other than solely as a result of being a director or a less than 10% beneficial owner of another entity). A conflict of interest situation can arise when a person takes actions or has interests that may make it difficult to perform his or her work objectively and effectively. Conflicts of interest may also arise if a person, or a member of his or her family, receives improper personal benefits as a result of his or her position.

All future and ongoing related party transactions (as defined under SEC rules) will require prior review and approval by the Audit Committee, which will have access, at our expense, to our attorneys or independent legal counsel. We will not enter into any such transaction without the approval of the Audit Committee. The Audit Committee will consider all relevant factors when determining whether to approve a related party transaction, including whether the related party transaction is on terms no less favorable than terms generally available to an unaffiliated third-party under the same or similar circumstances and the extent of the related party's interest in the transaction.

No director may participate in the approval of any transaction in which he is a related party, but that director is required to provide the other members of the board with all material information concerning the transaction. Additionally, we require each of our directors and executive officers to complete a directors' and officers' questionnaire that elicits information about related party transactions.

These procedures are intended to determine whether any such related party transaction impairs the independence of a director or presents a conflict of interest on the part of a director, employee or officer.

MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following discussion is a summary of the material United States federal income tax considerations applicable to Non-U.S. Holders (as defined below) of the purchase, ownership and disposition of our common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other United States federal tax laws, such as estate and gift tax laws, and any applicable state, local or non-United States tax laws are not discussed. This discussion is based on the United States Internal Revenue Code of 1986, as amended, or the Code, Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the United States Internal Revenue Service, or the IRS, in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a Non-U.S. Holder of our common stock. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS will not take, or that a court will not sustain, a contrary position to that discussed below regarding the tax consequences of the purchase, ownership and disposition of our common stock.

This discussion is limited to Non-U.S. Holders that hold our common stock as a "capital asset" within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all United States federal income tax consequences relevant to a Non-U.S. Holder's particular circumstances, including the impact of the Medicare contribution tax on net investment income or the alternative minimum tax. In addition, it does not address consequences relevant to Non-U.S. Holders subject to special rules, including, without limitation:

- United States expatriates and former citizens or long-term residents of the United States;
- persons holding our common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- brokers, dealers or traders in securities;
- "controlled foreign corporations," "passive foreign investment companies," and corporations that accumulate earnings to avoid United States federal income tax;
- partnerships or other entities or arrangements treated as partnerships for United States federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- persons deemed to sell our common stock under the constructive sale provisions of the Code;
- persons who hold or receive our common stock pursuant to the exercise of any employee stock option or otherwise as compensation;
- tax-qualified retirement plans;
- "qualified foreign pension funds" as defined in Section 897(l)(2) of the Code and entities all of the interests of which are held by qualified foreign pension funds;
- persons who own, or are deemed to own, more than 5% of our capital stock (except to the extent specifically set forth below); and
- persons subject to special tax accounting rules as a result of any item of gross income with respect to the stock being taken into account in an applicable financial statement.

If an entity treated as a partnership for United States federal income tax purposes holds our common stock, the tax treatment of a partner in the partnership generally will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships (or other entities treated as a partnership for United States federal income tax purposes) holding our common stock and the partners in such partnerships or other entities should consult their tax advisors regarding the United States federal income tax consequences to them.

THIS DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE UNITED STATES FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK ARISING UNDER THE UNITED STATES FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-UNITED STATES TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.

Definition of a Non-U.S. Holder

For purposes of this discussion, a "Non-U.S. Holder" is any beneficial owner of our common stock that is neither a "U.S. person" nor an entity treated as a partnership for United States federal income tax purposes.

A U.S. person is any person that, for United States federal income tax purposes, is or is treated as any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation, or an entity treated as a corporation, created or organized in the United States or under the laws of the United States, any state thereof, or the District of Columbia, or other entity treated as such for United States federal income tax purposes;
- an estate, the income of which is subject to United States federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a United States court and the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code), or (2) has a valid election in effect to be treated as a United States person for United States federal income tax purposes.

Distributions

As described in the section entitled "Dividend policy," we do not anticipate declaring or paying dividends to holders of our common stock in the foreseeable future. However, if we do make distributions of cash or property on our common stock, such distributions will constitute dividends for United States federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under United States federal income tax principles. To the extent those distributions exceed our current and accumulated earnings and profits, amounts not treated as dividends for United States federal income tax purposes will constitute a return of capital and will first be applied against and reduce a Non-U.S. Holder's adjusted tax basis in our common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described below under "*— Sales or Other Taxable Dispositions of Common Stock*."

Subject to the discussion below on effectively connected income, backup withholding and foreign accounts, dividends paid to a Non-U.S. Holder of our common stock will be subject to United States federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. Holder timely furnishes a valid IRS Form W-8BEN or IRS Form W-8BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate). A Non-U.S. Holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate of United States withholding tax, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

If dividends paid to a Non-U.S. Holder are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such dividends are attributable), the Non-U.S. Holder will be exempt from the United States federal withholding tax described above. To claim the exemption, the Non-U.S. Holder must timely furnish to the applicable withholding agent a valid IRS Form W-8ECI (or applicable successor form), certifying that the dividends are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States.

Any such effectively connected dividends will be subject to United States federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected dividends, as adjusted for certain items. Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

Sales or Other Taxable Dispositions of Common Stock

Subject to the discussion below regarding backup withholding and foreign accounts, a Non-U.S. Holder generally will not be subject to United States federal income tax on any gain realized upon the sale or other taxable disposition of our common stock unless:

- the gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable);
- the Non-U.S. Holder is a non-resident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our common stock constitutes a United States real property interest, or USRPI, by reason of our status as a United States real property holding corporation, or USRPHC, for United States federal income tax purposes.

Gain described in the first bullet point above generally will be subject to United States federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to United States federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on the gain derived from the sale or other disposition, which may be offset by United States source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the United States), provided the Non-U.S. Holder has timely filed United States federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we currently are not, and do not anticipate becoming, a USRPHC. Generally, a corporation is a UUSRPHC only if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our USRPIs relative to the fair market value of our non-United States real property interests and our other business assets, there can be no assurance we currently are not a USRPHC or will not become a USRPHC in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a Non-U.S. Holder of our common stock will not be subject to United States federal income tax if our common stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, and such Non-U.S. Holder owned, actually and constructively, 5% or less of our common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the Non-U.S. Holder's holding period.

NON-U.S. HOLDERS SHOULD CONSULT THEIR TAX ADVISORS REGARDING POTENTIALLY APPLICABLE INCOME TAX TREATIES THAT MAY PROVIDE FOR DIFFERENT RULES.

Information Reporting and Backup Withholding

Payments of dividends on our common stock will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the holder is a United States person and the holder either certifies its non-United States status, such as by furnishing a valid IRS Form W-8BEN, IRS Form W-8BEN-E or IRS Form W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any dividends on our common stock paid to the Non-U.S. Holder, regardless of whether any tax was actually withheld.

In addition, proceeds on the sale or other taxable disposition of our common stock within the United States, or conducted through certain United States-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent receives the certification described above and does not have actual knowledge or reason to know that such holder is a United States person, or the holder otherwise establishes an exemption. Proceeds of a disposition of our common stock conducted through a non-United States office of a non-United States broker generally will not be subject to backup withholding or information reporting. Non-U.S. holders should consult their tax advisors regarding the application of the information reporting and backup withholding rules to them.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a Non-U.S. Holder's United States federal income tax liability, provided the required information is timely furnished to the IRS.

Additional Withholding Tax on Payments Made to Foreign Accounts

Withholding taxes may be imposed under Sections 1471 to 1474 of the Code (such Sections commonly referred to as the Foreign Account Tax Compliance Act, or FATCA) on certain types of payments made to non-United States financial institutions and certain other non-United States entities. Specifically, a 30% withholding tax may be imposed on dividends on, or gross proceeds from the sale or other disposition of, our common stock paid to a "foreign financial institution" or a "non-financial foreign entity" (each as defined in the Code), unless (1) the foreign financial institution undertakes certain diligence and reporting obligations, (2) the non-financial foreign entity either certifies it does not have any "substantial United States owners" (as defined in the Code) or furnishes identifying information regarding each substantial United States owner, or (3) the foreign financial institution or non-financial foreign entity otherwise qualifies for an exemption from these rules. If the payee is a foreign financial institution and is subject to the diligence and reporting requirements in (1) above, it must enter into an agreement with the United States Department of the Treasury requiring, among other things, that it undertake to identify accounts held by certain "specified United States persons" or "United States-owned foreign entities" (each as defined in the Code), annually report certain information about such accounts, and withhold 30% on certain payments to non-compliant foreign financial institutions and certain other account holders. Foreign financial institutions located in jurisdictions that have an intergovernmental agreement with the United States governing FATCA may be subject to different rules.

Under the applicable Treasury Regulations and administrative guidance, withholding under FATCA generally applies to payments of dividends on our common stock, and subject to the recently released proposed Treasury

Regulations described below, will apply to payments of gross proceeds from the sale or other disposition of such stock on or after January 1, 2019. The Treasury Department recently released proposed Treasury Regulations which, if finalized in their present form, would eliminate the federal withholding tax of 30% applicable to the gross proceeds of a sale or other disposition of our common stock. In its preamble to such proposed Treasury Regulations, the Treasury Department stated that taxpayers may generally rely on the proposed Treasury Regulations until final Treasury Regulations are issued.

PROSPECTIVE INVESTORS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE POTENTIAL APPLICATION OF WITHHOLDING UNDER FATCA TO THEIR INVESTMENT IN OUR COMMON STOCK.

DESCRIPTION OF OUR SECURITIES

The following summary is a description of the material terms of our securities and is not complete. You should also refer to our certificate of incorporation and bylaws, which are included as exhibits to the registration statement of which this prospectus forms a part.

Authorized Capital Stock

Our amended and restated certificate of incorporation authorize us to issue up to 100,000,000 shares of common stock and 5,000,000 shares of preferred stock. Upon the closing of this offering, we will have 12,334,265 shares of common stock outstanding immediately after the closing of this offering.

Units Offered Hereby

We are offering 1,800,000 Units at an assumed offering price of $10.00 per Unit. Each Unit consists of (a) one share of our common stock, (b) one Class A warrant (the "Class A Warrants") to purchase one share of our common stock at an exercise price equal to $5.00 per share (or 50% of the unit offering price), exercisable until the fifth anniversary of the issuance date, and (c) one Class B warrant (the "Class B Warrants," and together with the Class A Warrants, the "Warrants") to purchase one share of our common stock at an exercise price equal to $10.00 per share (or 100% of the unit offering price), exercisable until the fifth anniversary of the issuance date and subject to certain adjustment and cashless exercise provisions as described herein. The shares of our common stock and the Warrants are immediately separable and will be issued separately, but will be purchased together in this offering.

We are also offering to those purchasers, if any, whose purchase of our common stock in this offering would otherwise result in such purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% (or, at the election of the purchaser prior to the date of issuance, 9.99%) of our outstanding common stock immediately following the consummation of this offering, the opportunity to substitute Series E Convertible Preferred Stock, referred to as "Preferred Stock" for the shares of common stock included in the Units purchased by that investor. Each share of Preferred Stock is being sold together with the same Warrants described above being sold with each share of common stock. For each share of Preferred Stock purchased in this offering in lieu of common stock, we will reduce the number of shares of common stock being sold in the offering on a one-for-one basis. Pursuant to this prospectus, we are also offering the shares of common stock issuable upon conversion of the Preferred Stock. The shares of Preferred Stock will otherwise have the preferences, rights and limitations described under "Description of Capital Stock — Series E Convertible Preferred Stock Being Issued in this Offering" below.

Common Stock

Shares of our common stock have the following rights, preferences and privileges:

Voting

Each holder of common stock is entitled to one vote for each share of common stock held on all matters submitted to a vote of stockholders. Any action at a meeting at which a quorum is present will be decided by a majority of the voting power present in person or represented by proxy, except in the case of any election of directors, which will be decided by a plurality of votes cast. There is no cumulative voting.

Dividends

Holders of our common stock are entitled to receive dividends when, as and if declared by our board of directors out of funds legally available for payment, subject to the rights of holders, if any, of any class of stock having preference over the common stock. Any decision to pay dividends on our common stock will be at the discretion of our board of directors. Our board of directors may or may not determine to declare dividends in the future. See "Dividend Policy." The board's determination to issue dividends will depend upon our profitability and financial condition any contractual restrictions, restrictions imposed by applicable law and the SEC, and other factors that our board of directors deems relevant.

Liquidation Rights

In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of our common stock will be entitled to share ratably on the basis of the number of shares held in any of the assets available for distribution after we have paid in full, or provided for payment of, all of our debts and after the holders of all outstanding series of any class of stock have preference over the common stock, if any, have received their liquidation preferences in full.

Other

Our issued and outstanding shares of common stock are fully paid and nonassessable. Holders of shares of our common stock are not entitled to preemptive rights. Shares of our common stock are not convertible into shares of any other class of capital stock, nor are they subject to any redemption or sinking fund provisions.

Preferred Stock

We are authorized to issue up to 5,000,000 shares of preferred stock. Our certificate of incorporation authorizes the board to issue these shares in one or more series, to determine the designations and the powers, preferences and relative, participating, optional or other special rights and the qualifications, limitations and restrictions thereof, including the dividend rights, conversion or exchange rights, voting rights (including the number of votes per share), redemption rights and terms, liquidation preferences, sinking fund provisions and the number of shares constituting the series. Our board of directors could, without stockholder approval, issue preferred stock with voting and other rights that could adversely affect the voting power and other rights of the holders of common stock and which could have the effect of making it more difficult for a third party to acquire, or of discouraging a third party from attempting to acquire, a majority of our outstanding voting stock.

Series D Convertible Preferred Stock

Prior to this offering, we will have 4,500 shares of our Series D convertible preferred stock outstanding. Each of our Series D convertible preferred stock will convert into 1,000 shares of our common stock; provided that the holder will not be permitted to convert the preferred stock to the extent that the holder or any of its affiliates would beneficially own in excess of 4.99% of our common stock after such conversion. The shares of Series D convertible preferred stock have no voting rights, except that the holders of shares of a majority of the Series D convertible preferred stock will be required to effect or validate any amendment, alteration or repeal of any of the provisions of the Certificate of Designation that materially adversely affects the powers, preferences or special rights of such series of preferred stock, with certain limited exceptions.

The holder of the Series D convertible preferred stock shall be entitled to receive cumulative dividends at the rate per share (as a percentage of the stated value per share of $1,000) of 7.5% per annum increasing to 15% per annum after November 23, 2021, payable quarterly on January 1, April 1, July 1 and October 1, 2021 and on each conversion date (with respect only to preferred stock being converted) in cash; provided, however, following the completion of our IPO no dividend shall accrue on the preferred stock thereafter. With respect to the distribution of assets upon liquidation or dissolution or winding up of the company, the Series D convertible preferred stock shall rank senior to the common stock. No sinking fund has been established for the retirement or redemption of the Series D convertible preferred stock.

Series E Convertible Preferred Stock

The following summary of certain terms and provisions of the Series E Preferred Stock offered in this offering is subject to, and qualified in its entirety by reference to, the terms and provisions set forth in our certificate of designation of preferences, rights and limitations of the Series E Preferred Stock, which has been filed as an exhibit to the registration statement of which this prospectus is a part. You should review a copy of the certificate of designation of the Series E Preferred Stock for a complete description of the terms and conditions of the Series E Preferred Stock.

Each share of Series E Preferred Stock is convertible at any time at the holder’s option into one share of common stock (subject to the beneficial ownership limitations as provided in the related certificate of designation of preferences), subject to adjustment as provided in the certificate of designation, provided that the holder will be prohibited from converting Series E Preferred Stock into shares of our common stock if, as a result of such conversion,

the holder, together with its affiliates, would own more than 4.99% (or, at the election of the purchaser prior to the date of issuance, 9.99%) of the total number of shares of our common stock then issued and outstanding. However, any holder may increase or decrease such percentage to any other percentage not in excess of 9.99%, provided that any increase in such percentage shall not be effective until the 61st day after such notice to us.

In the event of our liquidation, dissolution, or winding up, holders of our Series E Preferred Stock will be entitled to receive the amount of cash, securities or other property to which such holder would be entitled to receive with respect to such shares of Series E Preferred Stock if such shares had been converted to common stock immediately prior to such event (without giving effect for such purposes to the 4.99% or 9.99% beneficial ownership limitation, as applicable) subject to the preferential rights of holders of any class or series of our capital stock specifically ranking by its terms senior to the Series E Preferred Stock as to distributions of assets upon such event, whether voluntarily or involuntarily.

Shares of Series E Preferred Stock are not entitled to receive any dividends, unless and until specifically declared by our board of directors. However, holders of our Series E Preferred Stock are entitled to receive dividends on shares of Series E Preferred Stock equal (on an as-if-converted-to-common-stock basis) to and in the same form as dividends actually paid on shares of the common stock when such dividends are specifically declared by our board of directors, except for stock dividends or distributions payable in shares of common stock on shares of common stock or any other common stock equivalents for which the conversion price will be adjusted. We are not obligated to redeem or repurchase any shares of Series E Preferred Stock. Shares of Series E Preferred Stock are not otherwise entitled to any redemption rights, or mandatory sinking fund or analogous fund provisions.

The holders of the Series E Preferred Stock have no voting rights, except as required by law. We may not disproportionally alter or change adversely the powers, preferences and rights of the Series E Preferred Stock or amend the certificate of designation or amend our articles of incorporation or bylaws in any manner that disproportionally adversely affect any right of the holders of the Series E Preferred Stock without the affirmative vote of the holders of a majority of the shares of Series E Preferred Stock then outstanding.

Warrant Agent

The Class A Warrants and Class B Warrants will be issued in registered form under separate warrant agent agreements (each a “Warrant Agent Agreement”) between us and our warrant agent, Continental Stock Transfer & Trust Company (the “Warrant Agent”). The material provisions of the warrants are set forth herein and a copy of each of the Warrant Agent Agreements will be filed as an exhibit to the Registration Statement on Form S-1, of which this prospectus forms a part. The Company and the Warrant Agent may amend or supplement each of the Warrant Agent Agreements without the consent of any holder for the purpose of curing any ambiguity, or curing, correcting or supplementing any defective provision contained therein or adding or changing any other provisions with respect to matters or questions arising under each of the Warrant Agent Agreements as the parties thereto may deem necessary or desirable and that the parties determine, in good faith, shall not adversely affect the interest of the Class A Warrant or Class B Warrant holders, respectively. All other amendments and supplements to each of the Warrant Agent Agreement shall require the vote or written consent of holders of at least 50.1% of each of the Class A Warrants and Class B Warrants, as applicable.

Class A Warrants Offered Hereby

The Class A Warrants entitle the registered holder to purchase one share of our common stock at an exercise price equal to $5.00 per share (or 50% of the unit offering price), exercisable until the fifth anniversary of the issuance date. The exercise price and number of shares of common stock issuable upon exercise of the Class A Warrants may be adjusted in certain circumstances, including in the event of a stock dividend, extraordinary dividend, recapitalization, reorganization, merger or consolidation.

The Class A Warrants may be exercised upon surrender of the warrant certificate on or prior to the expiration date at the offices of the Warrant Agent, with the exercise form attached to the warrant certificate completed and executed as indicated, accompanied by full payment of the exercise price, by certified or official bank check payable to us, for the number of warrants being exercised. The Class A Warrant holders do not have the rights or privileges of holders of common stock and any voting rights until they exercise their Class A Warrants and receive shares of common stock. After the issuance of shares of common stock upon exercise of the Class A Warrants, each holder will be entitled to one vote for each share held of record on all matters to be voted on by stockholders.

No Class A Warrants will be exercisable for cash unless at the time of the exercise a prospectus or prospectus relating to common stock issuable upon exercise of the Class A Warrants is current and the common stock has been registered or qualified or deemed to be exempt under the securities laws of the state of residence of the holder of the warrants. Under the terms of the Class A Warrant Agent Agreement, we have agreed to use our best efforts to maintain a current prospectus or prospectus relating to common stock issuable upon exercise of the Class A Warrants until the expiration of the Class A Warrants. Additionally, the market for the Class A Warrants may be limited if the prospectus or prospectus relating to the common stock issuable upon exercise of the Class A Warrants is not current or if the common stock is not qualified or exempt from qualification in the jurisdictions in which the holders of such Class A Warrants reside. If we fail to maintain a current prospectus or prospectus relating to the common stock issuable upon the exercise of the Class A Warrants, such holders may exercise their Class A Warrants on a "cashless" basis pursuant to a formula set forth in the terms of the Class A Warrants. In no event will the registered holders of a Class A Warrant be entitled to receive a net-cash settlement in lieu of physical settlement in shares of our common stock.

No fractional shares of common stock will be issued upon exercise of the Class A Warrants. If, upon exercise of the Class A Warrants, a holder would be entitled to receive a fractional interest in a share, we will, upon exercise, round down to the nearest whole number the number of shares of common stock to be issued to the Warrant holder. If multiple Class A Warrants are exercised by the holder at the same time, we will aggregate the number of whole shares issuable upon exercise of all the Class A Warrants.

The price of the Class A Warrants has been arbitrarily established by us and the underwriter after giving consideration to numerous factors, including but not limited to, the pricing of the Units in this offering. No particular weighting was given to any one aspect of those factors considered. We have not performed any method of valuation of the warrants.

Class B Warrants Offered Hereby

The Class B Warrants entitle each holder to purchase one share of our common stock at an exercise price equal to $10.00 per share (or 100% of the unit offering price), exercisable until the fifth anniversary of the issuance date and subject to certain adjustment and cashless exercise provisions as described herein. The exercise price and number of shares of common stock issuable upon exercise of the Class B Warrants may be adjusted in certain circumstances, including in the event of a stock dividend, extraordinary dividend on or recapitalization, reorganization, merger or consolidation.

The Class B Warrants may be exercised upon surrender of the warrant certificate on or prior to the expiration date at the offices of the Warrant Agent, with the exercise form attached to the warrant certificate completed and executed as indicated, accompanied by full payment of the exercise price, by certified or official bank check payable to us, for the number of warrants being exercised. The Class B Warrant holders do not have the rights or privileges of holders of common stock and any voting rights until they exercise their Class B Warrants and receive shares of common stock. After the issuance of shares of common stock upon exercise of the Class B Warrants, each holder will be entitled to one vote for each share held of record on all matters to be voted on by stockholders.

No Class B Warrants will be exercisable for cash unless at the time of the exercise a prospectus or prospectus relating to common stock issuable upon exercise of the Class B Warrants is current and the common stock has been registered or qualified or deemed to be exempt under the securities laws of the state of residence of the holder of the warrants. Under the terms of the Class B Warrant Agent Agreement, we have agreed to use our best efforts to maintain a current prospectus or prospectus relating to common stock issuable upon exercise of the Class B Warrants until the expiration of the Class B Warrants. Additionally, the market for the Class B Warrants may be limited if the prospectus or prospectus relating to the common stock issuable upon exercise of the Class B Warrants is not current or if the common stock is not qualified or exempt from qualification in the jurisdictions in which the holders of such Class B Warrants reside. In no event will the registered holders of a Class B Warrant be entitled to receive a net-cash settlement in lieu of physical settlement in shares of our common stock. If we fail to maintain a current prospectus or prospectus relating to the common stock issuable upon the exercise of the Class B Warrants, such holders may exercise their Class B Warrants on a "cashless" basis pursuant to a formula set forth in the terms of the Class B Warrants.

Additionally, holders of Class B Warrants may exercise such warrants on a "cashless" basis upon the earlier of (i) 10 trading days from the issuance date of such warrant or (ii) the time when $10.0 million of volume is traded in our common stock, if the volume weighted average price ("VWAP") of our common stock on any trading day on or after the date of issuance fails to exceed the exercise price of the Class B Warrant (subject to adjustment for any stock

splits, stock dividends, stock combinations, recapitalizations and similar events). In such event, the aggregate number of shares of common stock issuable in such cashless exercise shall equal the product of (x) the aggregate number of shares of common stock that would be issuable upon exercise of the Class B Warrant in accordance with its terms if such exercise were by means of a cash exercise rather than a cashless exercise and (y) 1.00.

No fractional shares of common stock will be issued upon exercise of the Class B Warrants. If, upon exercise of the Class B Warrants, a holder would be entitled to receive a fractional interest in a share, we will, upon exercise, round down to the nearest whole number the number of shares of common stock to be issued to the Warrant holder. If multiple Class B Warrants are exercised by the holder at the same time, we will aggregate the number of whole shares issuable upon exercise of all the Class B Warrants.

The price of the Class B Warrants has been arbitrarily established by us and the underwriter after giving consideration to numerous factors, including but not limited to, the pricing of the Units in this offering. No particular weighting was given to any one aspect of those factors considered. We have not performed any method of valuation of the warrants.

Warrants

We have the following warrants outstanding as of the date of this prospectus:

- warrants to purchase an aggregate of 115,190 shares of our common stock having an exercise price per share equal to $2.30, which warrants expire on April 5, 2024;
- warrants to purchase an aggregate of 680,331 shares of our common stock having an exercise price per share equal to $0.03, which warrants expire on October 22, 2025;
- a warrant to purchase 226,599 shares of our common stock having an exercise price per share equal to $3.18, which warrant expires on March 15, 2026;
- placement agent warrants to purchase 150,000 shares of our common stock having an exercise price per share equal to $1.25, which warrants expire on July 7, 2026;
- placement agent warrants to purchase 75,000 shares of our common stock having an exercise price per share equal to $1.25, which warrants expire on August 4, 2026;
- warrants to purchase an aggregate of 8,655 shares of our common stock having an exercise price per share equal to $0.95, which warrants expire on July 22, 2030.

In addition, upon the closing of this offering, we will issue to the underwriters warrants to purchase 5.0% of the shares of our common stock issued in this offering. See “*Underwriting*.”

Registration Rights

In June 2021, we entered into an agreement to issue a total of $4.5 million of 7.5% Senior Secured Convertible Debentures (the “Debentures”) to Sabby Volatility Master Fund, Ltd (“Sabby”), of which $3.0 million of the Debentures were issued at closing. The agreement provides for the purchase by Sabby of an additional $1.5 million of the Debentures after we file a registration statement for an initial public offering. The Debentures will convert into Series D preferred stock at a conversion price of $1,000 per share in connection with the closing of this offering. Pursuant to the issuance of the Debentures, we agreed to register the resale of the shares of our common stock underlying the Series D preferred stock.

In March 2021, we issued a financial consultant a warrant to purchase 226,599 shares of our common stock having an exercise price per share equal to $3.18. The warrant agreement provides for “piggy-back” registration rights with respect to the shares of common stock underlying the warrant.

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

Some provisions of Delaware law, our amended and restated certificate of incorporation and our amended and restated bylaws contain provisions that could make hostile takeovers, including the following transactions, more difficult: an acquisition of us by means of a tender offer; an acquisition of us by means of a proxy contest or otherwise;

or the removal of our incumbent officers and directors. As a consequence, they may also inhibit temporary fluctuations in the market price of our common stock that often result from actual or rumored hostile takeover attempts. These provisions may also have the effect of preventing changes in the composition of our board and management. It is possible that these provisions could make it more difficult to accomplish or could deter transactions that stockholders may otherwise consider to be in their best interest or in our best interests, including transactions which provide for payment of a premium over the market price for our shares.

These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our Board of Directors. We believe that the benefits of the increased protection of our potential ability to negotiate with the proponent of an unfriendly or unsolicited proposal to acquire or restructure us outweigh the disadvantages of discouraging these proposals because negotiation of these proposals could result in an improvement of their terms.

Delaware Anti-Takeover Statute

We are subject to Section 203 of the Delaware General Corporation Law, which prohibits persons deemed to be "interested stockholders" from engaging in a "business combination" with a publicly held Delaware corporation for three years following the date these persons become interested stockholders unless the business combination is, or the transaction in which the person became an interested stockholder was, approved in a prescribed manner or another prescribed exception applies. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation's voting stock. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. The existence of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the Board of Directors. A Delaware corporation may "opt out" of these provisions with an express provision in its original certificate of incorporation or an express provision in its certificate of incorporation or by-laws resulting from a stockholders' amendment approved by at least a majority of the outstanding voting shares. We have not opted out of these provisions. As a result, mergers or other takeover or change in control attempts of us may be discouraged or prevented.

Undesignated Preferred Stock

The ability of our Board of Directors, without action by the stockholders, to issue undesignated shares of preferred stock with voting or other rights or preferences as designated by our Board of Directors could impede the success of any attempt to change control of us. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of our company.

Authorized Common Stock

Our authorized but unissued shares of common stock will be available for future issuance without stockholder approval. These additional shares may be utilized for a variety of corporate purposes, including future public offerings to raise additional capital and corporate acquisitions. The existence of authorized but unissued shares of common stock could render more difficult or discourage an attempt to obtain control of a majority of our common stock by means of a proxy contest, tender offer, merger or otherwise.

Advance Notice Requirements for Shareholder Proposals and Director Nominations

Our amended and restated bylaws will provide advance notice procedures for stockholders seeking to bring business before our annual meeting of shareholders, or to nominate candidates for election as directors at any meeting of shareholders. Our amended and restated by-laws also will specify certain requirements regarding the form and content of a stockholder's notice. These provisions may preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our meetings of stockholders.

No Cumulative Voting; No Action Without a Meeting; Special Meeting of Stockholders

Stockholders will not be permitted to cumulate their votes for the election of directors. In addition, stockholders will not be able to take action by written consent, and will only be able to take action at annual or special meetings of our stockholders. Furthermore, special meetings of our stockholders may be called only by Chief Executive Officer, our President, our Board of Directors or a majority of our stockholders.

Exclusive Forum Selection

Our amended and restated certificate of incorporation will require, to the fullest extent permitted by law, subject to limited exceptions, that derivative actions brought in our name, actions against directors, officers and employees for breach of fiduciary duty and other similar actions may be brought only in the Court of Chancery in the State of Delaware and, if brought outside of Delaware, the stockholder bringing the suit will be deemed to have consented to service of process on such stockholder's counsel in any action brought to enforce the exclusive forum provision. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our amended and restated certificate of incorporation.

Notwithstanding the foregoing, Section 27 of the Exchange Act creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder. In addition, Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. As a result, the exclusive forum provision will provide that the Court of Chancery and the federal district court for the District of Delaware will have concurrent jurisdiction over any action arising under the Securities Act or the rules and regulations thereunder, and the exclusive forum provision will not apply to suits brought to enforce any duty or liability created by the Exchange Act or the rules and regulations thereunder or any other claim for which the federal courts have exclusive jurisdiction. To the extent the exclusive forum provision restricts the courts in which our stockholders may bring claims arising under the Securities Act and the rules and regulations thereunder, there is uncertainty as to whether a court would enforce such provision. Investors cannot waive compliance with the federal securities laws and the rules and regulations promulgated thereunder.

Although we believe this provision benefits our company by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, a court may determine that this provision is unenforceable, and to the extent it is enforceable, the provision may have the effect of discouraging lawsuits against our directors and officers and increasing the cost to stockholders of bringing such lawsuits.

Transfer Agent and Registrar

The transfer agent for our common stock is Continental Stock Transfer & Trust Company, 17 Battery Place, New York, New York 10004.

Listing of Common Stock

We have applied to list our common stock on the NASDAQ Capital Market under the symbol "BJDX." Although we expect our common stock to be listed on the NASDAQ Capital Market, there can be no assurance that an active trading market will develop.

SHARES ELIGIBLE FOR FUTURE SALE

Before this offering, there has not been a public market for shares of our common stock. Future sales of substantial amounts of shares of our common stock, including shares issued upon the exercise of outstanding warrants, in the public market after this offering, or the possibility of these sales occurring, could cause the prevailing market price for our common stock to fall or impair our ability to raise equity capital in the future.

Upon the closing of this offering, we will have:

- 12,334,265 shares of common stock outstanding;
- 4,500,000 shares of common stock issuable upon the conversion of our Series D Convertible Preferred Stock;
- 1,255,775 shares of common stock issuable upon the exercise of our outstanding warrants to purchase common stock at a weighted average price of $1.03 per share;
- 500,786 shares of common stock issuable upon the exercise of our outstanding options to purchase common stock at a weighted average price of $2.98 per share;
- 1,770,000 shares of common stock that are available for future issuance under our 2021 Stock Plan;
- 1,800,000 shares of common stock issuable upon the exercise of Class A warrants to be issued in this offering;
- 1,800,000 shares of common stock issuable upon the exercise (including the cashless exercise) of Class B warrants to be issued in this offering; and
- 90,000 shares of common stock issuable upon exercise of warrants to be issued to the underwriters in connection with this offering.

All of the shares sold in this offering will be freely tradable without restriction under the Securities Act unless purchased by one of our affiliates as that term is defined in Rule 144 under the Securities Act, which generally includes directors, officers or 10% stockholders.

All of the foregoing shares that will be outstanding after this offering, other than the shares sold in this offering, are or will be upon issuance “restricted securities” as that term is defined in Rule 144 under the Securities Act. These restricted securities are eligible for public sale only if they are registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 under the Securities Act, which are summarized below.

Rule 144

In general, under Rule 144 as currently in effect, once we have been subject to public company reporting requirements for at least 90 days, a person who is not deemed to have been one of our affiliates for purposes of the Securities Act at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our affiliates, upon the expiration of the lock-up agreements described below, is entitled to sell those shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our affiliates, then that person is entitled to sell those shares without complying with any of the requirements of Rule 144.

In general, under Rule 144, as currently in effect, our affiliates or persons selling shares on behalf of our affiliates are entitled to sell upon the expiration of the lock-up agreements described below, within any three-month period beginning 90 days after the date of this prospectus, a number of shares that does not exceed the greater of:

- 1% of the number of shares of common stock then outstanding, or
- the average weekly trading volume of the common stock during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

Lock-Up Agreements

We and each of our officers, directors, affiliates and certain existing stockholders aggregating at least 9,812,735 of our outstanding shares have agreed, subject to certain exceptions, not to offer, issue, sell, contract to sell, encumber, grant any option for the sale of or otherwise dispose of any shares of our common stock or other securities convertible into or exercisable or exchangeable for shares of our common stock for a period of six months after this offering is completed without the prior written consent of the representative of the underwriters.

The representative of the underwriters may in its sole discretion and at any time without notice release some or all of the shares subject to lock-up agreements prior to the expiration of the lock-up period. When determining whether or not to release shares from the lock-up agreements, the representative will consider, among other factors, the security holder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time.

Registration Statement on Form S-8

We intend to file a registration statement on Form S-8 under the Securities Act to register shares that may be issued pursuant to the 2021 Plan. The registration statement on Form S-8 is expected to become effective immediately upon filing, and shares covered by the registration statement will then become eligible for sale in the public market upon issuance, subject to the Rule 144 limitations applicable to affiliates, vesting restrictions and any applicable lock-up agreements.

Selling Stockholder Resale Prospectus

As described in the Explanatory Note to the registration statement of which this prospectus forms a part, the registration statement also contains the Resale Prospectus to be used in connection with the potential resale by certain selling stockholders of our common stock. These shares of common stock have been registered to permit public resale of such shares, and the selling stockholders may offer the shares for resale from time to time pursuant to the Resale Prospectus. The selling stockholders may also sell, transfer or otherwise dispose of all or a portion of their shares in transactions exempt from the registration requirements of the Securities Act or pursuant to another effective registration statement covering those shares. Any shares sold by the selling stockholders until our common stock is listed or quoted on an established public trading market will take place at $10.00, which is the public offering price of the shares of common stock we are selling in our initial public offering. Thereafter, any sales will occur at prevailing market prices or in privately negotiated prices.

UNDERWRITING

Dawson James Securities, Inc. ("Dawson James" or the "Representative") is acting as the lead managing underwriter and as representative of the underwriters. Subject to the terms and conditions of an underwriting agreement, dated, _____ 2021, between us and the Representative, we have agreed to sell to each underwriter named below, and each underwriter named below has severally agreed to purchase, at the public offering price less the underwriting discounts set forth on the cover page of this prospectus, the number of units listed next to its name in the following table:

Name of Underwriter	Number of Units
Dawson James Securities, Inc.	
I-Bankers Direct, LLC	
Total	

The underwriters are committed to purchase all of the units offered by this prospectus if they purchase any units. The underwriting agreement also provides that if an underwriter defaults, the purchase commitments of non-defaulting underwriters may be increased, or the offering may be terminated. The underwriters are not obligated to purchase the shares of common stock and warrants covered by the underwriters' option to purchase additional shares of common stock and warrants described below. The underwriters are offering the units, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Over-Allotment Option

We have granted the representative of the underwriters an option exercisable for up to 45 days after the date of the underwriting agreement, to purchase up to 270,000 shares of common stock, and/or Class A Warrants, and/or Class B Warrants at the public offering price listed on the cover page of this prospectus, less underwriting discounts. The underwriters may exercise this option solely to cover over-allotments, if any, made in connection with this offering. To the extent the option is exercised, and the conditions of the underwriting agreement are satisfied, we will be obligated to sell to the underwriters, and the underwriters will be obligated to purchase, these additional shares of common stock and/or warrants.

Discounts and Commissions

We have agreed to pay the underwriters a cash fee equal to 8.0% of the aggregate gross proceeds. Upon the closing of this offering, we will issue to Dawson James, as representative of the underwriters, warrants entitling the representative to purchase 5.0% of the aggregate number of shares issued in this offering (including the number of shares issuable upon conversion of any shares of Series E Convertible Preferred Stock). The warrants shall be exercisable for a period of five years following the date of the commencement of sales in this offering at an exercise price of 125% of the public price per unit issued in the offering. Pursuant to FINRA Rule 5110(e), the Representative warrants and any shares of common stock issued upon exercise of the Representative warrants shall not be sold, transferred, assigned, pledged, or hypothecated, or be the subject of any hedging, short sale, derivative, put or call transaction that would result in the effective economic disposition of the securities by any person for a period of 180 days immediately following the date of commencement of sales of this offering, except the transfer of any security: (i) by operation of law or by reason of reorganization of the issuer; (ii) to any FINRA member firm participating in the offering and the officers, partners, registered persons or affiliates thereof, if all securities so transferred remain subject to the lock-up restriction set forth above for the remainder of the time period; (iii) if the aggregate amount of our securities held by the Representative or related persons does not exceed 1% of the securities being offered; (iv) that is beneficially owned on a pro-rata basis by all equity owners of an investment fund, provided that no participating member manages or otherwise directs investments by the fund and the participating members in the aggregate do not own more than 10% of the equity in the fund; (v) the exercise or conversion of any security, if all securities remain subject to the lock-up restriction set forth above for the remainder of the time period; (vi) if we meet the registration requirements of Forms S-3, F-3 or F-10; or (vii) back to us in a transaction exempt from registration with the SEC.

The Representative has advised us that the underwriters propose to offer the shares directly to the public at the public offering price set forth on the cover of this prospectus. In addition, the Representative may offer some of the shares to other securities dealers at such price less a concession of up to $ per share, $ per Class A Warrant, and $ per Class B Warrant. After the offering to the public, the offering price and other selling terms may be changed by the Representative without changing the Company's proceeds from the underwriters' purchase of the units.

The following table shows the public offering price, underwriting discounts and proceeds, before expenses, to us. The information assumes either no exercise or full exercise by the underwriters of their over-allotment option. The underwriting discounts are equal to the public offering price per share less the amount per share the underwriters pay us for the shares.

		Total	
	Per Unit	Without Over-Allotment Option	With Over-Allotment Option
Public offering price	$	$	$
Underwriting discounts	$	$	$
Proceeds, before expenses, to us	$	$	$

We estimate that the total expenses of the offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding underwriting discounts, will be approximately $988,000, all of which are payable by us. This figure includes an expense allowance of $ for accountable expenses and up to $12,500 for the actual roadshow expenses of the Representative that we have agreed to pay the Representative for reimbursement of its expenses related to this offering. We have paid an advance of $ to the Representative applicable to the accountable expenses, which will be returned to us to the extent such accountable expenses are not actually incurred in accordance with FINRA Rule 5110(g)(4)(A).

Determination of Offering Price

Before this offering, there has been no public market for our common stock. Accordingly, the public offering price will be negotiated between us and the representative. Among the factors to be considered in these negotiations are:

- the prospects for our company and the industry in which we operate;
- our past and present financial and operating performance;
- financial and operating information and market valuations of publicly traded companies engaged in activities similar to ours;
- the prevailing conditions of United States securities markets at the time of this offering; and
- other factors deemed relevant.

Lock-Up Agreements

We and each of our officers, directors, and 5% of greater stockholders have agreed, subject to certain exceptions, not to offer, issue, sell, contract to sell, encumber, grant any option for the sale of or otherwise dispose of any shares of our common stock or other securities convertible into or exercisable or exchangeable for shares of our common stock for a period of six months after this offering is completed without the prior written consent of the Representative.

The Representative may in its sole discretion and at any time without notice release some or all of the shares subject to lock-up agreements prior to the expiration of the lock-up period. When determining whether or not to release shares from the lock-up agreements, the representative will consider, among other factors, the security holder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time.

Right of First Refusal

According to the terms of the underwriting agreement, the Representative shall have the right of first refusal for a period of twelve months after the closing of this offering to act as sole book-running manager for all future public equity offerings by us, or any successor to or subsidiary of our company, during such period.

Indemnification

We have agreed to indemnify the underwriters against specified liabilities, including liabilities under the Securities Act, and to contribute to payments the underwriters may be required to make in respect thereof.

Electronic Offer, Sale and Distribution of Shares

A prospectus in electronic format may be made available on a website maintained by the Representative and may also be made available on a website maintained by other underwriters. The underwriters may agree to allocate a number of shares to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the Representative to underwriters that may make Internet distributions on the same basis as other allocations. In connection with the offering, the underwriters or syndicate members may distribute prospectuses electronically. No forms of electronic prospectus other than prospectuses that are printable as Adobe® PDF will be used in connection with this offering.

The underwriters have informed us that they do not expect to confirm sales of shares offered by this prospectus to accounts over which they exercise discretionary authority.

Other than the prospectus in electronic format, the information on any underwriter's website and any information contained in any other website maintained by an underwriter is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or any underwriter in its capacity as underwriter and should not be relied upon by investors.

Price Stabilization, Short Positions and Penalty Bids

In connection with this offering, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of our common stock. Specifically, the underwriters may over-allot in connection with this offering by selling more shares than are set forth on the cover page of this prospectus. This creates a short position in our common stock for its own account. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares common stock over-allotted by the underwriters is not greater than the number of shares of common stock that they may purchase in the over-allotment option. In a naked short position, the number of shares of common stock involved is greater than the number of shares common stock in the over-allotment option. To close out a short position, the underwriters may elect to exercise all or part of the over-allotment option. The underwriters may also elect to stabilize the price of our common stock or reduce any short position by bidding for, and purchasing, common stock in the open market.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter or dealer repays selling concessions allowed to it for distributing a security in this offering because the underwriter repurchases that security in stabilizing or short covering transactions.

Finally, the underwriters may bid for, and purchase, shares of our common stock in market making transactions, including "passive" market making transactions as described below.

These activities may stabilize or maintain the market price of our common stock at a price that is higher than the price that might otherwise exist in the absence of these activities. The underwriters are not required to engage in these activities, and may discontinue any of these activities at any time without notice.

In connection with this offering, the underwriters and selling group members, if any, or their affiliates may engage in passive market making transactions in our common stock immediately prior to the commencement of sales in this offering, in accordance with Rule 103 of Regulation M under the Exchange Act.

Certain Relationships

Certain of the underwriters and their affiliates may in the future provide various investment banking, commercial banking and other financial services for us and our affiliates for which they may in the future receive customary fees, however, except for the right of first refusal disclosed in this prospectus, we have no present arrangements with any of the underwriters for any further services.

Offer Restrictions Outside the United States

Other than in the United States, no action has been taken by us or the underwriters that would permit a public offering of the securities offered by this prospectus in any jurisdiction where action for that purpose is required. The securities offered by this prospectus may not be offered or sold, directly or indirectly, nor may this prospectus or any other offering material or advertisements in connection with the offer and sale of any such securities be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons into whose possession this prospectus comes are advised to inform themselves about and to observe any restrictions relating to the offering and the distribution of this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities offered by this prospectus in any jurisdiction in which such an offer or a solicitation is unlawful.

LEGAL MATTERS

The validity of the common stock offered hereby will be passed upon for us by Schiff Hardin LLP, Washington, DC. Ellenoff Grossman & Schole LLP, New York, New York, is acting as counsel to the underwriters in this offering.

EXPERTS

Our financial statements appearing elsewhere in this prospectus have been included herein in reliance upon the report of Wolf and Company, P.C., an independent registered public accounting firm, as stated in their report appearing elsewhere herein, and upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith. For further information about us and the common stock offered hereby, we refer you to the registration statement and the exhibits and schedules filed therewith. Statements contained in this prospectus regarding the contents of any contract or other document that is filed as an exhibit to the registration statement are not necessarily complete, and each such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. Upon the completion of this offering, we will be required to file periodic reports, proxy statements, and other information with the SEC pursuant to the Exchange Act. You may read and copy this information at the SEC's Public Reference Room, 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website that contains reports, proxy statements and other information about issuers, including us, that file electronically with the SEC. The address of this site is *www.sec.gov*.

Index to Financial Statements

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and the Stockholders of Bluejay Diagnostics, Inc.:

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Bluejay Diagnostics, Inc. (the "Company") as of December 31, 2020 and 2019, the related statements of operations, changes in redeemable preferred stock and stockholders' deficit and cash flows for the years then ended, and the related notes to the financial statements (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Emphasis of a Matter Regarding Going Concern

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the financial statements, the Company has suffered recurring losses from operations and its total liabilities exceed its total assets. This raises substantial doubt about the Company's ability to continue as a going concern. Management's plans in regard to these matters also are described in Note 1. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting 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.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Wolf & Company, P.C.

Boston, Massachusetts
June 30, 2021

We have served as the Company's auditor since 2017.

Bluejay Diagnostics, Inc.
Balance Sheets

	December 31,	
	2020	**2019**
ASSETS		
Current assets:		
Cash and cash equivalents	$ 912,361	$ 96,011
Accounts receivable	—	645
Inventory	84,762	123,508
Prepaid expenses	7,965	10,262
Other current assets	53,106	69,915
Total current assets	1,058,194	300,341
Property and equipment, net	459,138	616,177
Total assets	$ 1,517,332	$ 916,518
LIABILITIES, REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 374,928	$ 29,125
Due to related party	125,102	86,005
Accrued expenses	133,820	—
Notes payable, current portion	1,041,186	265,000
Note payable, Paycheck Protection Program	14,725	—
Deposit for future stock subscriptions	—	100,000
Derivative warrant liability	155,629	96,408
Total current liabilities	1,845,390	576,538
Notes payable, long-term	—	804,288
Total liabilities	1,845,390	1,380,826
Series A redeemable, convertible preferred stock, $0.0001 par value; 10,600 shares authorized, issued and outstanding (preference in liquidation of $1,219,513 at December 31, 2020)	1,077,303	892,809
Series B redeemable, convertible preferred stock, $0.0001 par value; 5,918 shares authorized; 5,187 shares issued and outstanding (preference in liquidation of $1,950,105 at December 31, 2020)	1,800,347	1,575,321
Series C redeemable, convertible preferred stock, $0.0001 par value; 636 shares authorized, issued and outstanding (preference in liquidation of $1,008,227 at December 31, 2020)	1,000,465	—
Stockholders' deficit:		
Common stock, $0.0001 par value; 9,000,000 shares authorized; 3,147,200 shares issued and outstanding	315	315
Additional paid-in capital	—	—
Accumulated deficit	(4,206,488)	(2,932,753)
Total stockholders' deficit	(4,206,173)	(2,932,438)
Total liabilities, redeemable preferred stock and stockholders' deficit	$ 1,517,332	$ 916,518

See report of independent registered public accounting firm and notes to the financial statements.
Reflects a 1-for-3.15 stock dividend effective June 7, 2021.

Bluejay Diagnostics, Inc.
Statements of Operations

	Year Ended December 31,	
	2020	**2019**
Operating expenses:		
Research and development	$ 527,253	$ 454,610
General and administrative	596,116	883,999
Marketing and business development	73,022	292,804
Total operating expenses	1,196,391	1,631,413
Operating loss	(1,196,391)	(1,631,413)
Other income (expense):		
Gain on transfer of equipment at fair value	—	741,590
Gain on forgiveness of note payable, Paycheck Protection Program	102,000	—
Derivative warrant liability gain (loss)	(42,434)	9,842
Interest income (expense), net of amortization of premium	(26,997)	52,284
Other income	5,537	7,855
Total other income, net	38,106	811,571
Net loss	$ (1,158,285)	$ (819,842)
Loss per share:		
Basic and diluted loss per share	$ (0.37)	$ (0.26)
Weighted average common shares:		
Basic and diluted	3,147,200	3,147,200

See report of independent registered public accounting firm and notes to the financial statements.
Reflects a 1-for-3.15 stock dividend effective June 7, 2021.

Bluejay Diagnostics, Inc.
Statements of Changes in Redeemable Preferred Stock and Stockholders' Deficit

	Redeemable, Convertible Preferred Stock						Stockholders' Deficit				
	Series A		Series B		Series C		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at December 31, 2018	10,600	$ 708,315	—	$ —	—	$ —	3,147,200	$ 315	$ —	$ (1,938,462)	$ (1,938,147)
Issuance of Series B redeemable, convertible preferred stock, net of issuance costs of $33,682	—	—	4,732	1,676,801	—	—	—	—	—	—	—
Reclassification of derivative warrant liability	—	—	—	(106,250)	—	—	—	—	—	—	—
Accretion of Series B redeemable, convertible preferred stock to redemption value	—	—	—	4,770	—	—	—	—	(4,770)	—	(4,770)
Accretion of Series A redeemable, convertible preferred stock to redemption value	—	184,494	—	—	—	—	—	—	(10,045)	(174,449)	(184,494)
Stock-based compensation expense	—	—	—	—	—	—	—	—	14,815	—	14,815
Net loss	—	—	—	—	—	—	—	—	—	(819,842)	(819,842)
Balance at December 31, 2019	10,600	892,809	4,732	1,575,321	—	—	3,147,200	315	—	(2,932,753)	(2,932,438)
Issuance of Series B redeemable, convertible preferred stock, net of issuance costs of $4,570	—	—	455	160,228	—	—	—	—	—	—	—
Issuance of Series C redeemable, convertible preferred stock, net of issuance costs of $8,776	—	—	—	—	636	994,832	—	—	—	—	—
Reclassification of derivative warrant liability	—	—	—	(16,787)	—	—	—	—	—	—	—
Accretion of redeemable, convertible preferred stock to redemption value	—	184,494	—	81,585	—	5,633	—	—	(156,262)	(115,450)	(271,712)
Allocation of proceeds to common stock warrant	—	—	—	—	—	—	—	—	148,892	—	148,892
Stock-based compensation expense	—	—	—	—	—	—	—	—	7,370	—	7,370
Net loss	—	—	—	—	—	—	—	—	—	(1,158,285)	(1,158,285)
Balance at December 31, 2020	10,600	$ 1,077,303	5,187	$ 1,800,347	636	$ 1,000,465	3,147,200	$ 315	$ —	$ (4,206,488)	$ (4,206,173)

See report of independent registered public accounting firm and notes to the financial statements.
Reflects a 1-for-3.15 stock dividend effective June 7, 2021.

Bluejay Diagnostics, Inc.
Statements of Cash Flows

	Year Ended December 31,	
	2020	**2019**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (1,158,285)	$ (819,842)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expense	157,039	142,975
Stock-based compensation expense	7,370	14,815
Non-cash interest expense	(51,530)	(98,351)
Gain on forgiveness of note payable, Paycheck Protection Program	(102,000)	—
Gain on transfer of equipment at fair value	—	(741,591)
Loss (gain) on revaluation of derivative warrant liability	42,434	(9,842)
Changes in operating assets and liabilities:		
Accounts receivable	645	(645)
Inventory	38,746	(103,877)
Prepaid expenses	2,297	3,547
Other current assets	16,809	(59,946)
Accounts payable	345,803	(25,213)
Due to related party	39,097	12,000
Accrued expenses	152,865	(4,148)
Net cash used in operating activities	(508,710)	(1,690,118)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	—	(6,021)
Net cash used in investing activities	—	(6,021)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Payments of principal on notes payable	—	(265,000)
Proceeds from issuance of Series B redeemable, convertible preferred stock, net of issuance costs	60,228	1,676,801
Proceeds from issuance of Series C redeemable, convertible preferred stock, net of issuance costs	994,832	—
Proceeds from issuance of notes payable	154,000	—
Proceeds from note payable, Paycheck Protection Program	116,000	—
Deposit for future stock subscriptions	—	100,000
Net cash provided by financing activities	1,325,060	1,511,801
Increase (decrease) in cash and cash equivalents	816,350	(184,338)
Cash and cash equivalents, beginning of year	96,011	280,349
Cash and cash equivalents, end of year	$ 912,361	$ 96,011
SUPPLEMENTAL DISCLOSURES		
Interest paid	$ 53,240	$ 46,067
Accretion of Series A redeemable, convertible preferred stock dividend	$ 42,400	$ 42,400
Accretion of Series A redeemable, convertible preferred stock issuance costs and fair value adjustment	$ 142,094	$ 142,094
Accretion of Series B redeemable, convertible preferred stock dividend	$ 75,018	$ —
Accretion of Series B redeemable, convertible preferred stock issuance costs	$ 6,567	$ 4,770
Accretion of Series C redeemable, convertible preferred stock dividend	$ 4,619	$ —
Accretion of Series C redeemable, convertible preferred stock issuance costs	$ 1,014	$ —
Fair value of warrants issued for Series B redeemable, convertible preferred stock	$ 16,787	$ 106,250
Relative fair value of warrants for common stock issued in connection with notes payable	$ 148,892	$ —

See report of independent registered public accounting firm and notes to the financial statements.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

1. NATURE OF OPERATIONS AND BASIS OF PRESENTATION

Business

Bluejay Diagnostics, Inc. (the "Company") commenced its activities on March 20, 2015 incorporated under the laws of the State of Delaware. The Company is a mission-driven in-vitro diagnostic company that aims to develop and market minimally-invasive Point-of-Care ("POC") diagnostics tests and devices that provide patients and providers with access to affordable and timely healthcare. The Company's focus is on the infectious disease, inflammation, and oncology markets.

The Company's ALLEREYE diagnostic test ("ALLEREYE") is a POC device that offers healthcare providers a cost effective, reliable, easy to use solution for diagnosis of Allergic Conjunctivitis. ALLEREYE received clearance by the U.S. Food and Drug Administration (the "FDA") in October 2017.

The Company pursuing biomarker detection of Sepsis, Cancer and other diseases, utilizing the Symphony technology platform and Symphony IL-6 test licensed from Toray Industries, Inc. of Japan (see Note 3). The Company is also developing biomarkers for detection of other diseases such as Cardiac Ishcemia and Congestive Heart Failure.

Since its inception, the Company has devoted substantially all of its efforts to business planning, sales and marketing, research and development, and raising capital.

Risks and Uncertainties

The Company is subject to a number of risks similar to other companies in its industries, including rapid technological change, competition from larger pharmaceutical and biotechnology companies and dependence on key personnel.

The extent of the impact of the COVID-19 pandemic on the Company's business continues to be highly uncertain and difficult to predict, as the responses that the Company, other businesses and governments are taking continue to evolve. Furthermore, capital markets and economies worldwide have also been negatively impacted by the COVID-19 pandemic, and it is possible that it could cause a lasting national and/or global economic recession. Policymakers around the globe have responded with fiscal policy actions to support the healthcare industry and economy as a whole.

To date, the Company has experienced significant changes in the business as a result of the COVID-19 pandemic. The impact has delayed the Company's ability to generate revenue as result of the diversification of potential customer budgets towards the COVID-19 pandemic. The extent to which the COVID-19 pandemic may in the future materially impact the Company's financial condition, liquidity or results of operations is uncertain.

Stock Split

On June 7, 2021, the Company's Board of Directors declared a stock dividend of 2.15 shares of common stock for every share of common stock ("Stock Split"). This stock dividend was deemed a large stock dividend and was treated as a 1-for-3.15 stock split. The common stock shares and per share amounts (other than authorized shares) in these financial statements and related notes have been retroactively restated to reflect the stock dividend for all periods presented.

Going concern

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company has evaluated whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern. The Company has experienced recurring losses from operations, and has a stockholders' deficit and negative working capital of $4,206,173 and $787,196, respectively, as of December 31, 2020. The Company has relied on raising capital to finance its operations.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

1. NATURE OF OPERATIONS AND BASIS OF PRESENTATION (cont.)

The Company plans to raise capital through equity and/or debt financings and expects to generate revenue from sales to customers in the second half of 2021. There is no assurance, however, that the Company will be able to raise sufficient capital to fund its operations on terms that are acceptable, if at all, or generate profitable operations.

There is substantial doubt about the Company's ability to continue as a going concern within a year after the date that the financial statements are issued. These financial statements do not include any adjustments relating to the recoverability of recorded asset amounts that might be necessary as a result of the above uncertainty.

2. SIGNIFICANT ACCOUNTING POLICIES

A summary of the significant accounting policies followed by the Company in the preparation of the accompanying financial statements follows:

Use of estimates

The preparation of the Company's financial statements and related disclosures in conformity with U.S. Generally Accepted Accounting Principles ("US GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosures of contingent liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Management evaluates its estimates on an ongoing basis. Although estimates are based on the Company's historical experience, knowledge of current events and actions it may undertake in the future, actual results may materially differ from these estimates and assumptions.

Cash and cash equivalents

The Company considers all highly liquid investments with maturities of three months or less at the date of purchase to be cash equivalents. The Company maintains its cash in bank deposit accounts which, at times, may exceed the federal insurance limit.

Inventory

Inventory is stated at the lower of cost or net realizable value. Cost is determined using standard cost on a first-in, first-out basis, reduced for excess and obsolete inventory, if necessary. Costs to ship inventory to storage facilities are included in inventory. There was no excess and/or obsolete inventory at December 31, 2020 or 2019. Net realizable value is calculated as the estimated selling price in the ordinary course of business, less selling costs Total inventory at December 31, 2020 and 2019 consists entirely of finished goods.

Property and equipment

Property and equipment are carried at cost (see Note 3). Depreciation expense is provided over the estimated useful lives of the assets using the straight-line method. A summary of the estimated useful lives is as follows:

Classification	Estimated Useful Life in Years
Office furniture, fixtures, and equipment	5
Website	5
Lab equipment	5

Maintenance and repairs are charged to expense as incurred, while any additions or improvements are capitalized.

Research and development expenses

Costs incurred for research and development are expensed as incurred. Research and development expenses primarily consist of salaries and related expenses for personnel, outside consulting services and sponsored research and the costs of materials and supplies used.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

2. SIGNIFICANT ACCOUNTING POLICIES (cont.)

Concentrations of credit risk

Cash and cash equivalents are financial instruments that potentially subject the Company to concentrations of credit risk. The Company may maintain deposits in financial institutions in excess of government insured limits. The Company believes that it is not exposed to significant credit risk as its deposits are held at financial institutions that management believes to be of high credit quality and the Company has not experienced any losses on these deposits. As of December 31, 2020, the Company's cash and cash equivalents are held with one financial institution.

Income taxes

The Company is primarily subject to U.S. federal and Massachusetts state income tax.

For federal and state income taxes, deferred tax assets and liabilities are recognized based upon temporary differences between the financial statement and the tax basis of assets and liabilities, net operating loss carryforwards and research and development tax credits. Deferred income taxes are based upon prescribed rates and enacted laws applicable to periods in which differences are expected to reverse. A valuation allowance is recorded when it is more likely than not that some portion or all of the deferred tax assets will not be realized. Accordingly, the Company provides a valuation allowance, if necessary, to reduce deferred tax assets to amounts that are realizable.

Tax positions taken or expected to be taken in the course of preparing the Company's tax returns are required to be evaluated to determine whether the tax positions are "more-likely-than-not" of being sustained by the applicable tax authority. Tax positions not deemed to meet a more-likely-than-not threshold are recorded as a tax expense in the current year. There were no uncertain tax positions that require accrual or disclosure in the financial statements as of December 31, 2020 and 2019. The Company's policy is to recognize interest and penalties related to income tax, if any, in income tax expense. As of December 31, 2020 and 2019, the Company has no accruals for interest or penalties related to income tax matters. Generally, the Company is no longer subject to federal and state tax examinations by tax authorities for the years subsequent to 2016. There are currently no pending income tax examinations. To the extent the Company has tax attribute carryforwards, the tax years in which the attribute was generated may still be adjusted upon examination by the Internal Revenue Service and state tax authorities to the extent utilized in a future period.

Fair Value of Financial instruments

The fair value of Company's financial instruments, consisting of cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities, convertible promissory notes and notes payable approximates their recorded amounts due to their relatively short settlement terms.

Fair Value Measurements

The Company applies a three-level valuation hierarchy for fair value measurements. The categorization of assets and liabilities within the valuation hierarchy is based on the lowest level of input that is significant to the measurement of fair value.

Level 1 inputs to the valuation methodology utilize unadjusted quoted market prices in active markets for identical assets and liabilities.

Level 2 inputs to the valuation methodology are other observable inputs, including quoted market prices for similar assets and liabilities, quoted prices for identical and similar assets and liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data.

Level 3 inputs to the valuation methodology are unobservable inputs based on management's best estimate of the inputs that market participants would use in pricing the asset or liability at the measurement date, including assumptions about risk.

A change to the level of an asset or liability within the fair value hierarchy is determined at the end of a reporting period.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

2. SIGNIFICANT ACCOUNTING POLICIES (cont.)

Redeemable Convertible Preferred Stock

The Company has classified redeemable, convertible preferred stock ("Preferred Stock") as temporary equity in the accompanying balance sheets due to terms that allow for redemption of the shares upon certain events that are outside of the Company's control.

Stock-based compensation

Share-based compensation expense for all share-based payment awards made to employees, directors and non-employees is measured based on the grant-date fair value of the award. Share-based compensation expense for awards granted to non-employees is determined using the fair value of the consideration received or the fair value of the equity instruments issued, whichever is more reliably measured.

The Company uses the Black-Scholes option pricing model to determine the fair value of options granted. The Company recognizes the compensation cost of share-based awards on a straight-line basis over the requisite period of the award.

The determination of the fair value of share-based payment awards utilizing the Black-Scholes model is affected by the stock price and a number of assumptions, including expected volatility, expected life, risk-free interest rate and expected dividends. The Company does not have a history of market prices of its common stock, and as such, volatility is estimated using historical volatilities of similar public entities. The expected life of the awards is estimated based on the simplified method for grants to employees, and is based on the contractual term for non-employee awards. The risk-free interest rate assumption is based on observed interest rates appropriate for the terms of the awards. The dividend yield assumption is based on history and expectation of paying no dividends. The Company recognizes forfeitures related to employee share-based payments when they occur. Forfeited options are recorded as a reduction to stock compensation expense.

During 2020 and 2019, the Company calculated fair value of share-based awards using the Black-Scholes model with the following assumptions:

	2020	2019
Risk-free interest rate	0.27% – 0.28%	2.47% – 3.00%
Expected dividend yield	0.00%	0.00%
Volatility factor	88.60%	48.10%
Expected life of option (in years)	5.00	5.75 – 6.25

Derivative instruments

The Company generally does not use derivative instruments to hedge exposures to cash flow or market risks; however, certain warrants to purchase preferred stock that do not meet the requirements for classification as equity are classified as liabilities. In such instances, net-cash settlement is assumed for financial reporting purposes, even when the terms of the underlying contracts do not provide for a net-cash settlement. Such financial instruments are initially recorded at fair value with subsequent changes in value charged (credited) to operations each reporting period. If these instruments subsequently meet the requirements for classification as equity, the Company reclassifies the then fair value to equity.

The Company values its outstanding warrants using the Black-Scholes option pricing model.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

2. SIGNIFICANT ACCOUNTING POLICIES (cont.)

The fair value of the outstanding Series B redeemable preferred stock warrants (see Note 9) at December 31, 2020 and 2019 was based on the assumptions as follows:

	2020	2019
Risk-free interest rate	0.17% – 0.36%	1.69%
Dividend rate	0.00%	0.00%
Volatility	88.60%	48.10%
Expected life (in years)	3.23 – 4.64	4.25

Advertising costs

The Company expenses advertising costs as incurred. For the years ended December 31, 2020 and 2019, the Company incurred $16,000 and $12,000 in advertising expenses, respectively.

Segment Reporting

Management has determined that the Company has one operating segment, which is consistent with the Company structure and how it manages the business. As of December 31, 2020 and 2019, all of the Company's assets were located in the United States.

Net Loss per Share

Basic net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock outstanding for the period, without consideration for potentially dilutive securities if their effect is antidilutive. Diluted net loss per share is computed by dividing the net loss by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding for the period determined using the treasury stock and if-converted methods. Dilutive common stock equivalents are comprised of convertible preferred stock, options outstanding under the Company's stock option plan and warrants. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding as inclusion of the potentially dilutive securities would be antidilutive.

The following potential common shares were not included in the computation of diluted net loss per share since such inclusion would have been anti-dilutive:

	Years ended	
	2020	2019
Redeemable, convertible preferred stock	2,584,323	949,195
Options to purchase common stock	375,826	472,080
Warrants for common stock	4,846,688	—
Warrants for Series B redeemable, convertible preferred stock	115,030	104,330

Recently Issued Accounting Standards

In February 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-02, *Leases* ("ASU 2016-02") which establishes new accounting and disclosure requirements for leases. ASU No. 2016-02 requires recognition in the statement of operations of a single lease cost, calculated so that the cost of the lease is allocated over the lease term, generally on a straight-line basis. ASU 2016-02 requires classification of all cash payments within operating activities in the statement of cash flows. Disclosures are required to provide the amount, timing and uncertainty of cash flows arising from leases. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. The Company will adopt the provisions of ASU 2016-02 in the quarter beginning January 1, 2022.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

2. SIGNIFICANT ACCOUNTING POLICIES (cont.)

In August 2020, the FASB issued ASU 2020-06, *Debt — Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40) Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. This guidance changes how entities account for convertible instruments and contracts in an entity's own equity and simplifies the accounting for convertible instruments by removing certain separation models for convertible instruments. This guidance also modifies the guidance on diluted earnings per share calculations. This new guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2023. The Company is currently evaluating the impact of this ASU on the financial statements.

3. BUSINESS AGREEMENTS

License and Distribution Agreement with Hitachi

On October 1, 2015, the Company entered into a licensing and distribution agreement with Hitachi Chemical Co., Ltd ("Hitachi") for the manufacturing and supply of the ALLEREYE product (the "Product"). The agreement also specifies that at the Company's request, Hitachi shall grant exclusive rights to manufacture the Product or have the Product manufactured by a third party contract manufacturer using all or part of the Licensed Technology. Licensed Technology includes Hitachi's patents, patent applications, and know-how that is required to manufacture the Product.

On September 26, 2018, the Company entered into a technology and patent licensing agreement (the "Restructured Agreement") with Hitachi and its majority owned subsidiary, Kyowa Medex Co., Ltd ("KMX"), which terminated the October 1, 2015 licensing and distribution agreement. The Restructured Agreement specifies that KMX will grant to the Company an exclusive, non-transferable license to licensed technology information and patents to make, use, sell, market, export, or otherwise distribute the ALLEREYE product. The Restructured Agreement also specifies that Hitachi is responsible for transferring all equipment and machinery necessary to manufacture the product from Japan to the Company's designated facilities in the United States, and Hitachi will provide training on the operation, maintenance, and use of the machinery and manufacturing know-how of the product. In exchange for such concessions, the Company released Hitachi from all charges, claims, obligations, and costs arising out of the October 1, 2015 agreement. There was no other consideration exchanged as part of this agreement. The fair value of equipment transferred in 2019 was determined to be approximately $742,000. The fair value was recorded as equipment and a corresponding gain in 2019.

License and Development Agreement with Naval Medical Research Center

On March 7, 2019, the Company entered into a cooperative research and development agreement ("CRAD Agreement") with Naval Medical Research Center ("NMRC"). The objective of the agreement is for the development of lateral flow rapid test for sensitive and accurate diagnosis of various tick-borne diseases including Lyme disease. The CRAD Agreement grants the Company a non-exclusive, royalty-free, non-commercial research use license to any innovation made by NMRC occurring under the CRAD Agreement in performance of the objective. During the years ended December 31, 2020 and 2019, the Company paid $0 and $75,000, respectively, to NMRC in connection with the CRAD Agreement. The remaining commitment under the CRAD Agreement is $76,350 as of December 31, 2020 and 2019, and is included in accounts payable on the balance sheet.

License and Supply Agreement with Toray

On October 6, 2020, the Company entered into a license and supply agreement ("Toray Agreement") with Toray Industries, Inc. ("Toray"). Under the Toray Agreement, the Company received the exclusive license to make and distribute the protein detection chips that has a function of automatic stepwise feeding of reagent ("Toray Chips") outside of Japan. In exchange for the license, the Company committed to make two milestone payments of $120,000 each. The first milestone payment was made in January 2021, and the second milestone payment is due one year from the date in which the Toray Agreement was executed. Both milestone payments totaling $240,000 were accrued for as of December 31, 2020, and are included in current liabilities on the balance sheet. In addition, following the first sale of Toray Chips, the Company will also make royalty payments to Toray equal to 15% of the net sales of the Toray Chips for the period that any underlying patents exist or for 5 years after the first sale. Following the first sale, the

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

3. BUSINESS AGREEMENTS (cont.)

Company will pay a one-time minimum royalty of $60,000, which shall be creditable against any royalties owed to Toray in such calendar year. The Company will pay a minimum royalty of $100,000 in each year thereafter, which are creditable against any royalties owed to Toray in such calendar year. There were no sales of or revenues from the Toray Chips during the year ended December 31, 2020.

4. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following at December 31, 2020 and 2019:

	December 31,	
	2020	**2019**
Furniture, fixtures, and equipment	$ 16,046	$ 16,046
Website	4,619	4,619
Lab equipment	741,591	741,591
	762,256	762,256
Less: accumulated depreciation	(303,118)	(146,079)
Property and equipment, net	$ 459,138	$ 616,177

5. INCOME TAXES

For the years ended December 31, 2020 and 2019, the Company did not record a current or deferred income tax expense or benefit due to current and historical losses incurred by the Company and a valuation allowance on its deferred tax assets.

The effective income tax rate differed from the statutory federal income tax rate due to the following:

	Year ended December 31,	
	2020	**2019**
Federal income taxes	21.00%	21.00%
State income taxes, net of federal benefit and tax credits	6.80%	7.80%
Permanent differences	0.72%	(1.54)%
Change in valuation allowance	(28.48)%	(27.28)%
Effective income tax rate	0.00%	0.00%

Significant components of the Company's net deferred tax assets and liabilities as of December 31, 2020 and 2019 are as follows:

	Year ended December 31,	
	2020	**2019**
Deferred tax assets		
Net operating losses	$ 958,000	$ 654,000
Tax credits	31,000	28,000
Intangibles assets	74,000	10,000
Other	7,000	5,000
Gross deferred tax asset	1,070,000	697,000
Valuation allowance	(997,000)	(662,000)
	$ 73,000	$ 35,000
Deferred tax liabilities		
Note premium amortization	(47,000)	(33,000)
Fixed assets	(26,000)	(2,000)
	$ (73,000)	$ (35,000)

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

5. INCOME TAXES (cont.)

The Company regularly assesses the need for a valuation allowance against its deferred tax assets. In making that assessment, the Company considers both positive and negative evidence related to the likelihood of realization of the deferred tax assets to determine, based on the weight of available evidence, whether it is more-likely-than-not that some or all of the deferred tax assets will not be realized. In assessing the realizability of deferred tax assets, the Company considers taxable income in prior carryback years, as permitted under the tax law, forecasted taxable earnings, tax planning strategies, and the expected timing of the reversal of temporary differences. This determination requires significant judgment, including assumptions about future taxable income that are based on historical and projected information and is performed on a jurisdiction-by-jurisdiction basis.

The Company continues to maintain a full valuation allowance against its net deferred tax assets. During the years ended December 31, 2020 and 2019, management assessed the positive and negative evidence in its operations, and concluded that it is more likely than not that its deferred tax assets as of December 31, 2020 and 2019 will not be realized given the Company's history of operating losses. The valuation allowance against deferred tax assets increased by approximately $335,000 and $242,000 during 2020 and 2019, respectively, related mainly to a full valuation allowance recorded against additional net operating losses and tax credits generated in the year.

As of December 31, 2020, the Company had federal net operating losses of $3,585,000, which may be available to offset future federal income tax liabilities. The Company's federal net operating losses incurred prior to 2018 of $713,000 expire through 2037, while its federal net operating losses incurred in 2018 and onwards, $2,872,000, can be carried forward indefinitely.

As of December 31, 2019, the Company had federal net operating losses of $2,487,000, which may be available to offset future federal income tax liabilities.

As of December 31, 2020, the Company had post-apportioned Massachusetts net operating losses of $3,244,000 that can generally be carried forward 20 years. As of December 31, 2019, the Company had post-apportioned state net operating losses of $2,142,000 that can generally be carried forward 20 years.

As of December 31, 2020, the Company had $4,000 and $35,000 of federal and state research and development credits, respectively, which will expire at various dates through 2040. As of December 31, 2019, the Company had $4,000 and $31,000 of federal and state research and development credits, respectively, which will expire at various dates through 2039.

6. FAIR VALUE MEASUREMENTS

Liabilities measured at fair value on a recurring basis are summarized as follows:

	December 31, 2020			
	Level 1	**Level 2**	**Level 3**	**Total**
Liabilities				
Derivative warrant liability	$ —	$ —	$ 155,629	$ —
	$ —	$ —	$ 155,629	$ —

	December 31, 2019			
	Level 1	**Level 2**	**Level 3**	**Total**
Liabilities				
Derivative warrant liability	$ —	$ —	$ 96,408	$ —
	$ —	$ —	$ 96,408	$ —

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

6. FAIR VALUE MEASUREMENTS (cont.)

The table below presents the changes in Level 3 liabilities measured at fair value on a recurring basis.

	Warrant Liability
Balance at December 31, 2018	$ —
Issuance of Series B warrants	106,250
Unrealized gain	(9,842)
Balance at December 31, 2019	96,408
Issuance of Series B warrants	16,787
Unrealized loss	42,434
Balance at December 31, 2020	$ 155,629

Unrealized gain (loss) on revaluation of derivative warrant liability is included in derivative warrant liability gain (loss) in the Statements of Operations.

There are no assets measured at fair value on a recurring basis, nor are there assets or liabilities measured at fair value on a non-recurring basis, other than the fair value of equipment transferred from Hitachi in 2019 (see Note 3) and the fair value of Common Stock Warrants (see Note 7).

7. NOTES PAYABLE

2017 Notes Payable

In 2017, the Company entered into multiple Unit Purchase Agreements In connection with this financing (the "Financing"), the Company issued 106 Units at a purchase price of $20,000 each. A Unit consisted of 100 shares of Series A redeemable, convertible preferred stock ("Series A") at a purchase price of $100 per share ("Original Offering Price") and $10,000 in notes payable (the "Notes"). Gross proceeds from the Financing were $2,120,000 and were allocated between the Notes and Series A based on their relative fair values with $1,643,349 allocated to the Notes and $476,651 to the Series A. In connection with the Financing, the Company paid $183,194 in issuance costs of which $91,597 was recorded as a discount on the Notes, and is being amortized over the term of the Notes. The remaining $91,597 was netted with the proceeds allocated to Series A (see Note 8).

Certain Notes with aggregate principal amount of $930,000 mature on March 20, 2022 while $130,000 of the Notes mature on June 22, 2022. The Notes bear interest at 5% per annum, increasing to 7% on the amounts in default. For the first twelve months following issuance of the Notes, interest accrued on the Notes was added to the principal balance of the Notes and not paid out to investors. For the years ended December 31, 2020 and 2019, interest expense on the Notes was $59,274 and $45,792, respectively, all of which was paid to investors. The Notes require principal payments of $265,000 per year commencing in 2019 on the second anniversary of the Notes' issuance and annually thereafter, until the final principal payment upon maturity. For the year ended December 31, 2020, no principal payments were made to investors and the remaining unpaid balance on the Notes became immediately due and was classified as short-term at December 31, 2020. For the year ended December 31, 2019, principal payments made to investors were $265,000. The Notes, plus any related accrued interest, are secured by all business assets of the Company and are fully guaranteed by Lana Management and Business Research International, LLC ("LMBRI"), a related party (see Note 10).

The allocation of the gross proceeds from the Financing resulted in recording a premium on the Notes of $583,349. The premium is amortized over the term of the Notes. The Company recognized $116,670 credit to non-cash interest expense due to the amortization of the premium and $18,319 of non-cash interest expense due to the amortization of the issuance costs, recorded as a discount on the Notes in both 2020 and 2019. The remaining premium and discount on the Notes of $145,837 and $22,900, respectively, are included in the outstanding notes payable on the balance sheet as of December 31, 2020. The remaining premium and discount on the Notes of $262,507 and $41,219, respectively, are included in the outstanding notes payable on the balance sheet as of December 31, 2019.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

7. NOTES PAYABLE (cont.)

2020 Subordinated Promissory Notes

On October 22, 2020, the Company issued $154,000 in subordinated promissory notes ("Subordinated Notes") to the Company's shareholders, including $30,000 to LMBRI. The Subordinated Notes accrued interest at 8% payable at each quarter end, and have a maturity date of March 31, 2021. The Company defaulted on the Subordinated Notes on March 31, 2021 and these notes started to accrue 15% penalty interest starting on the date of default.

In conjunction with the issuance of the Subordinated Notes, the Company issued to each noteholder warrants to purchase shares of the Company's common stock ("Common Stock Warrants") totaling 4,846,688 Common Stock Warrants, of which 944,160 were issued to LMBRI (see Note 10). The Common Stock Warrants have an exercise price of $0.03 per share, and are exercisable starting at the issuance date and have 5 year term. The Common Stock Warrants may be exercised for cash or through cancellation of the Subordinated Notes. The Common Stock Warrants were accounted for as equity. The fair value of the Common Stock Warrant was estimated to be $4,488,570 using a Black-Scholes option pricing model.

The following assumptions were used to estimate the fair value of the Common Stock Warrants using the Black-Scholes option pricing model:

Risk-free interest rate	0.38%
Dividend rate	0%
Volatility	88.60%
Expected life (in years)	5

The Company does not have a history of market prices of its common stock, and as such, volatility of the Company's common stock is estimated using historical volatilities of similar public entities. The expected life is the remaining contractual term of the warrant instrument. The risk-free interest rate assumption is based on observed interest rates appropriate for the remaining contractual term. The dividend yield assumption is based on history and expectation of paying no dividends.

The proceeds from the issuance of the Subordinated Notes were allocated between the Subordinated Notes and the Common Stock Warrants based on their relative fair values, with $5,108 allocated to the Subordinated Notes and $148,892 allocated to the Common Stock Warrants. The proceeds allocated to the Common Stock Warrants were recorded in additional paid-in capital on the accompanying balance sheet as of December 31, 2020. The allocation of the proceeds to the Common Stock Warrants resulted in a discount to the Subordinated Notes of $148,891. The Company is amortizing this discount using the effective interest method, of which $65,140 was amortized during the year ended December 31, 2020 and included in interest income (expense), net of amortization of premium in the Statement of Operations.

8. STOCKHOLDERS' EQUITY

Preferred Stock

The Company's Certificate of Incorporation, as amended, provides for issuance of Series A redeemable, convertible preferred stock ("Series A"), Series B redeemable, convertible preferred stock ("Series B"), and Series C redeemable, convertible preferred stock ("Series C"), collectively referred to as "Preferred Stock".

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

8. STOCKHOLDERS' EQUITY (cont.)

In connection with the Financing (see Note 7), the Company issued 10,600 shares of Series A. The allocation of proceeds from the Financing was based on the relative fair values of the Notes and Series A and resulted in the Series A being recorded at $476,651, net of $91,597 of issuance costs. The Series A are accreted to the redemption value through December 31, 2021, the redemption date. Accretion of the Series A to redemption value, including the accretion of dividends and issuance costs, was $184,494 for the year ended December 31, 2020 and 2019.

On April 5, 2019, the Company entered into Subscription Agreements for the issuance of Series B (the "Series B Financing"). In connection with the Series B Financing, the Company issued 4,455 shares of Series B at a purchase price of $361.50 per share. Gross proceeds from the Series B Financing were approximately $1,610,000. The Subscription Agreements also specify that purchasers investing $150,000 or more in Series B were to be issued a five year stock purchase warrant ("Series B Warrants") exercisable into a total number of Series B shares equal to 15% of the purchase price divided by $361.50. A total of 622 Series B Warrants were issued in 2019 in connection with the Series B Financing.

In connection with the Series B Financing, in 2019 the Company entered into an Amended Subscription Agreement with an investor to issue additional Series B and warrants for committed proceeds up to $150,000, available to be drawn on within one year of the date of the closing of the offering. During 2019, the Company drew $100,000 of the committed amount and issued 277 shares of Series B and 41 Series B Warrants. Series B Warrants issued in 2019 expire between April 2024 and December 2024.

The remaining $50,000 commitment was drawn on in January 2020 and the Company issued 138 shares of Series B and 21 Series B Warrants. In July and August 2020, the Company issued additional 317 shares of Series B and 47 warrants to purchase Series B at an exercise price of $361.50 per share for gross proceeds of approximately $115,000. The Series B Warrants issued in 2020 expire between January and December 2025.

The Series B are accreted to the redemption value through December 31, 2024, the redemption date. Accretion of the Series B to redemption value, including the accretion of dividends and issuance costs, was $81,585 and $4,770 for the years ended December 2020 and 2019, respectively.

The Series B Warrants are accounted for as a derivative liability under ASC 480 – *Distinguishing Liabilities from Equity*. The fair value of Series B Warrants at the issuance date in 2020 and 2019 was determined to be $16,787 and $106,250, respectively.

On November 19, 2020, the Company entered into a Subscription Agreement for the issuance of Series C (the "Series C Financing") with Toray. In connection with the Series C Financing, the Company issued 636 shares of Series C at a purchase price per share of $1,578.50. Proceeds from the Series C Financing, net of issuance costs were $994,832.

The Series C are accreted to the redemption value through December 31, 2021, the redemption date. Accretion of the Series C to redemption value, including the accretion of dividends and issuance costs, was $5,633 for the year ended December 2020.

The Series A ranks senior to Series B and Series C. Series B is pari passu with the Series C. Significant terms of the Series A, Series B and Series C (collectively, "Preferred Stock") are as follows:

Voting

The holder of each share of Preferred Stock has the right to vote for each share of common stock into which such Preferred Stock could convert. Except as otherwise provided, the holders of Preferred Stock and Common Stock shall vote together as a single class.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

8. STOCKHOLDERS' EQUITY (cont.)

Dividends

The holders of Preferred Stock shall be entitled to receive dividends at a rate per annum of 4%. Dividends shall accrue whether or not declared and are cumulative. The dividends shall be paid quarterly on the first day of March, June, September, and December only if and when declared by the Board of Directors. No dividends have been declared by the Company through December 31, 2020.

Liquidation Preference

In the event of any liquidation, dissolution or winding up of the Company, the holders of Series A shall be entitled to be paid out of the assets of the Company, after all creditors of the Company have been paid, before any payments shall be made to the holders of Series B, Series C and common stock, in the amount of the Original Offering Price per share, plus all accrued but unpaid dividends thereon. If insufficient assets and funds are available to permit payment to the Series A holders, then all available assets and funds shall be distributed to the Series A holders on a pro rata basis. All dividends accrued and unpaid to the date of such distribution shall be paid out of the assets of the Company before any distribution is made to the holders of any junior stock of the Company.

In the event of any liquidation, dissolution or winding up of the Company, the holders of Series B and Series C, which are pari passu stocks, shall be entitled to be paid out of the assets of the Company before any payments shall be made to the holders of the common stock, in the amount of the Original Offering Price per share, plus all accrued but unpaid dividends thereon. If insufficient assets and funds are available to permit payment to the Series B and Series C holders, then all available assets and funds shall be distributed to the Series B and Series C holders on a pro rata basis. All dividends accrued and unpaid to the date of such distribution shall be paid out of the assets of the Company before any distribution is made to the holders of any junior stock of the Company.

Conversion

Each share of Series A, Series B and Series C is entitled to convert into 157.36 shares of common stock at $0.64, $2.30 and $10.03 per share, respectively, at any time by the holder following issuance.

Redemption

If the Company has not had an Initial Public Offering, or has not been acquired by December 31, 2024, the Company will be required, upon request of the holders of at least two thirds of the outstanding shares, to redeem the outstanding Preferred Stock at the greater of (i) Original Offering Price, plus accrued dividends, or (ii) the fair market value as determined by an appraiser selected by Company who is reasonably acceptable to the holders of a majority of the outstanding Preferred Stock and paid for by the Company.

2018 Stock Incentive Plan

In 2018, the Company adopted the 2018 Stock Incentive Plan (the "2018 Plan"). The 2018 Plan, which is administered by the Board of Directors, permits the Company to grant incentive and nonqualified stock options for the purchase of common stock, and restricted stock awards to employees, consultants, and directors of the Company. The maximum number of shares reserved for issuance under the 2018 Plan is 629,440. At December 31, 2020, there were 253,614 shares available for grants under the 2018 Plan.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

8. STOCKHOLDERS' EQUITY (cont.)

The following is a summary of stock option activity for the year ended December 31, 2020:

	Number of Stock Options	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life in Years	Aggregate Intrinsic Value
Outstanding at December 31, 2019	472,080	$ 0.50		
Granted	13,898	0.95		
Cancelled/forfeited	(110,152)	0.16		
Outstanding at December 31, 2020	375,826	$ 0.59	8.0	$ 245,619
Exercisable at December 31, 2020	265,675	$ 0.46	7.9	$ 207,544

There were no options exercised in the years ended December 31, 2020 and 2019. The intrinsic value at December 31, 2020 was estimated based on the fair value of common stock of $1.24 per the most recent common stock valuation as of December 31, 2020.

For the years ended December 31, 2020 and 2019, the Company recorded stock-based compensation expense of $7,370 and $14,815, respectively, in connection with share-based payment awards, which are recorded in general and administrative expenses in the statements of operations.

At December 31, 2020, there was approximately $800 of unrecognized compensation expense related to non-vested stock option awards that are expected to be recognized over a weighted-average period of 1.3. The weighted-average fair value of stock options granted for each of the years ended December 31, 2020 and 2019, under Black Scholes option pricing model, were $0.65 per share and $0.04 per share, respectively.

9. WARRANTS

The following table summarizes information with regard to warrants outstanding at December 31, 2020.

	Shares	Exercisable for	Exercise Price	Weighted Average Remaining Life
Series B Warrants	731	Series B	$ 361.50	3.3
Common Stock Warrants	4,846,688	Common Stock	$ 0.03	4.8

10. RELATED PARTY TRANSACTIONS

LMBRI has board members in common with the Company. Funds were advanced to the Company by LMBRI for operational and Food and Drug Administration ("FDA") pre-submission funding purposes since inception. Amounts payable to LMBRI from the Company at December 31, 2020 and 2019 were $125,102 and $86,005, respectively, and are included in due to related party on the balance sheets. The outstanding balance due to LMBRI is payable upon demand.

The Company and LMBRI have entered into an Expense Sharing Agreement, whereby the Company will reimburse LMBRI monthly for certain shared expenses including insurance, rent, salaries, telephone, and other miscellaneous expenses. The Company is billed $4,000 monthly for these expenses. The Company incurred and paid LMBRI $48,000 for these shared expenses in each of the years 2020 and 2019. Such amounts are included in general and administrative expenses on the accompanying statement of operations.

Bluejay Diagnostics, Inc.
Notes to Financial Statements
Years Ended December 31, 2020 and 2019

11. NOTE PAYABLE, PAYCHECK PROTECTION PROGRAM

In response to the COVID-19 pandemic, the Paycheck Protection Program ("PPP") was established under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act and administered by the United States Small Business Administration ("SBA"). On April 7, 2020, the Company received a loan of $116,000 under the PPP through its bank. The loan bears interest at 1.0%, with principal and interest payments deferred for the first six months of the loan. After that, the loan and interest would be paid back over a period of eighteen months, if the loan is not forgiven under the terms of the PPP.

The Company received notice of forgiveness from the SBA in November 2020 for $102,000 of the PPP loan, and recognized a gain on forgiveness the loan of $102,000 in the statement of operations. In February 2021, the Company received a corrected notice of forgiveness for an additional $5,000 and repaid the remaining balance of $9,000. The PPP loan balance as of December 31, 2020 includes the accrued interest outstanding of $725. During 2020, the Company also received an advance of $5,000 from the COVID-19 Economic Injury Disaster Loan (EIDL) program that does not need to be repaid and was recognized in other income in the statement of operations.

12. SUBSEQUENT EVENTS

In February 2021, the Company repaid $268,000 in principal and $2,010 in accrued interest on the Notes, and $9,000 in PPP loan principal.

On March 15, 2021, pursuant to a financial services agreement with a financial advisor, the Company granted warrants to purchase 226,599 shares of common stock at an exercise price of $3.177 per share. The warrants are exercisable until March 15, 2026. The terms of the financial services agreement also provide for the incentive bonus of $200,000 payable upon closing of an IPO if such a closing occurs on or before January 31, 2022.

On June 1, 2021, the Company's Series A was converted into 1,668,016 shares of common stock, its Series B was converted into 816,226 shares of common stock, and its Series C was converted into 100,081 shares of common stock. In addition, the Company's remaining 2017 Notes were amended such that they would automatically convert into shares of common stock upon the occurrence of a qualified financing, as defined, and the Series B Warrants were amended to be exercisable into common stock. The Notes automatically converted on June 8, 2021 into 580,002 shares of common stock. The company is currently analyzing the accounting impact of the Notes and Series B Warrants modification.

On June 4, 2021, the Company created Bluejay Spinco, LLC, ("SpinCo") a wholly owned subsidiary of the Company, for purposes of further development of Allereye (see Note 1). The Company transferred assets and liabilities in accordance with the Contribution and Assumption Agreement to the newly created subsidiary. The Company is responsible for the operational activities of SpinCo and bears all costs necessary to operate SpinCo. The Company's CEO is also the CEO of SpinCo and oversees the business strategy and operations of SpinCo.

On June 7, 2021, the holders of $132,383 in principal of the 2020 Subordinated Promissory Notes, as amended, elected to exercise their warrants into 4,166,357 shares of common stock, with the principal from those notes applied to the exercise price of the warrants. The remaining $21,617 principal amount of the 2020 Subordinated Promissory Notes was repaid in cash and the related warrants to purchase 680,331 shares of common stock at an exercise price of $0.03 per share remain outstanding.

On June 7, 2021, the Company's Board of Directors declared a stock dividend of 2.15 shares of common stock for every share of common stock. Further, the Company approved an amendment to the Company's certificate of incorporation to increase the number of authorized shares of common and preferred stock to 30 million and 5 million shares, respectively. As noted in Note 1 to these financial statements, the common stock shares and per share amounts (other than authorized shares) in these financial statements and related notes reflect the stock dividend for all periods presented, including the amounts reported in subsequent events disclosed above.

On June 8, 2021, the Company entered into a definitive agreement to issue a total of $4.5 million of 7.5% Senior Secured Convertible Debentures (the "Debentures"), of which $3.0 million were issued on June 8, 2021. The agreement provides for the purchase by the holder of the Debentures of an additional $1.5 million Debentures after the Company files a registration statement in an Initial Public Offering. The Debentures are convertible, at the holder's option, into the Company's Series D Convertible Preferred Stock at $1,000 conversion price per share.

Bluejay Diagnostics, Inc.
Condensed Consolidated Balance Sheets
(Unaudited)

	June 30, 2021	December 31, 2020
ASSETS		
Current assets:		
Cash and cash equivalents	$ 2,400,457	$ 912,361
Inventory	—	84,762
Prepaid expenses	6,390	7,965
Deferred offering costs	267,891	—
Other current assets	58,106	53,106
Total current assets	2,732,844	1,058,194
Property and equipment, net	392,700	459,138
Total assets	$ 3,125,544	$ 1,517,332
LIABILITIES, REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	$ 309,381	$ 374,928
Due to related party	115,102	125,102
Accrued expenses	211,431	133,820
Notes payable, current portion	—	1,041,186
Note payable, Paycheck Protection Program	—	14,725
Derivative warrant liability	—	155,629
Convertible debentures	2,501,904	—
Other current liabilities	111,211	—
Total liabilities	3,249,029	1,845,390
Commitments and Contingencies (See Note 6)		
Series A redeemable, convertible preferred stock, $0.0001 par value; 10,600 shares authorized; 0 and 10,600 shares issued and outstanding at June 30, 2021 and December 31, 2020, respectively	—	1,077,303
Series B redeemable, convertible preferred stock, $0.0001 par value; 5,918 shares authorized; 0 and 5,187 shares issued and outstanding at June 30, 2021 and December 31, 2020, respectively	—	1,800,347
Series C redeemable, convertible preferred stock, $0.0001 par value; 636 shares authorized; 0 and 636 shares issued and outstanding at June 30, 2021 and December 31, 2020, respectively	—	1,000,465
Stockholders' deficit:		
Common stock, $0.0001 par value; 30,000,000 shares authorized; 10,477,880 and 3,147,200 shares issued and outstanding at June 30, 2021 and December 31, 2020, respectively	1,048	315
Additional paid-in capital	4,916,376	—
Accumulated deficit	(5,040,909)	(4,206,488)
Total stockholders' deficit	(123,485)	(4,206,173)
Total liabilities, redeemable, convertible preferred stocks and stockholders' deficit	$ 3,125,544	$ 1,517,332

See notes to unaudited condensed consolidated financial statements.
Reflects a 1-for-3.15 stock dividend effective June 7, 2021.

Bluejay Diagnostics, Inc.
Condensed Consolidated Statements of Operations
(Unaudited)

	Six Months Ended June 30,	
	2021	**2020**
Operating expenses:		
Research and development	$ 250,175	$ 105,469
General and administrative	529,741	321,752
Marketing and business development	119,354	39,222
Total operating expenses	899,270	466,443
Operating loss	(899,270)	(466,443)
Other income (expense):		
Derivative warrant liability gain (loss)	9,676	(49,667)
Interest income (expense), net of amortization of premium	(32,116)	24,610
Grant income	75,000	—
Other income	12,289	5,228
Total other income (expense), net	64,849	(19,829)
Net loss	$ (834,421)	$ (486,272)
Net loss per share – Basic and diluted	$ (0.20)	$ (0.15)
Weighted average common shares outstanding:		
Basic and diluted	4,201,688	3,147,200

See notes to unaudited condensed consolidated financial statements.
Reflects a 1-for-3.15 stock dividend effective June 7, 2021.

Bluejay Diagnostics, Inc.
Condensed Consolidated Statements of Changes in Redeemable Preferred Stock and Stockholders' Deficit
(Unaudited)

	Redeemable, Convertible Preferred Stock						Stockholders' Deficit				
	Series A		Series B		Series C		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at December 31, 2020	**10,600**	**$ 1,077,303**	**5,187**	**$ 1,800,347**	**636**	**$ 1,000,465**	**3,147,200**	**$ 315**	**$ —**	**$ (4,206,488)**	**$ (4,206,173)**
Accretion of redeemable, convertible preferred stock to redemption value	—	73,912	—	33,994	—	19,961	—	—	(127,867)	—	(127,867)
Stock-based compensation expense	—	—	—	—	—	—	—	—	319	—	319
Fair value of warrants issued for services	—	—	—	—	—	—	—	—	180,339	—	180,339
Exercise of common stock warrants	—	—	—	—	—	—	4,166,357	417	131,966	—	132,383
Conversion of redeemable, convertible preferred stock into common stock	(10,600)	(1,151,215)	(5,187)	(1,834,341)	(636)	(1,020,426)	2,584,323	258	4,005,724	—	4,005,982
Conversion of Amended 2017 Convertible Notes	—	—	—	—	—	—	580,000	58	579,942	—	580,000
Reclassification of Series B Warrants	—	—	—	—	—	—	—	—	145,953	—	145,953
Net loss	—	—	—	—	—	—	—	—	—	(834,421)	(834,421)
Balance at June 30, 2021	**—**	**$ —**	**—**	**$ —**	**—**	**$ —**	**10,477,880**	**$ 1,048**	**$4,916,376**	**$ (5,040,909)**	**$ (123,485)**

	Redeemable, Convertible Preferred Stock						Stockholders' Deficit				
	Series A		Series B		Series C		Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Shares	Amount			
Balance at December 31, 2019	**10,600**	**$ 892,809**	**4,732**	**$ 1,575,321**	**—**	**$ —**	**3,147,200**	**$ 315**	**$ —**	**$ (2,932,753)**	**$ (2,932,438)**
Issuance of Series B redeemable, convertible preferred stock, net of issuance costs of $4,570	—	—	139	50,249	—	—	—	—	—	—	—
Reclassification of derivative warrant liability	—	—	—	(5,228)	—	—	—	—	—	—	—
Accretion of redeemable, convertible preferred stock to redemption value	—	92,247	—	40,793	—	—	—	—	—	(133,040)	(133,040)
Stock-based compensation benefit	—	—	—	—	—	—	—	—	—	(1,841)	(1,841)
Net loss	—	—	—	—	—	—	—	—	—	(486,272)	(486,272)
Balance at June 30, 2020	**10,600**	**$ 985,056**	**4,871**	**$ 1,661,135**	**—**	**$ —**	**3,147,200**	**$ 315**	**$ —**	**$ (3,553,906)**	**$ (3,553,591)**

See notes to unaudited condensed consolidated financial statements.
Reflects a 1-for-3.15 stock dividend effective June 7, 2021.

Table of Contents

Bluejay Diagnostics, Inc.
Condensed Consolidated Statements of Cash Flows
(Unaudited)

	Six Months Ended June 30,	
	2021	**2020**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net loss	$ (834,421)	$ (486,272)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expense	64,504	73,030
Stock-based compensation expense (benefit)	319	(1,841)
Gain on forgiveness of note payable, Paycheck Protection Program	(5,000)	—
Non-cash interest expense	1,770	(49,175)
Loss (gain) on revaluation of derivative warrant liability	(9,676)	49,667
Changes in operating assets and liabilities:		
Accounts receivable	—	645
Inventory	84,762	(84,762)
Prepaid expenses and other current assets	(3,425)	13,044
Accounts payable	(98,389)	197,738
Due to related party	(10,000)	23,097
Accrued expenses and other current liabilities	76,886	—
Net cash used in operating activities	**(732,669)**	**(264,829)**
CASH FLOWS FROM INVESTING ACTIVITIES:		
Purchase of property and equipment	1,934	—
CASH FLOWS FROM FINANCING ACTIVITIES:		
Payments of principal on notes payable	(289,617)	—
Payments of convertible debenture issuance costs	(395,000)	
Payments of deferred offering costs	(87,552)	—
Proceeds from issuance of convertible debentures	3,000,000	—
Proceeds from issuance of Series B redeemable, convertible preferred stock, net of issuance costs	—	107,926
Proceeds (payments) on note payable, Paycheck Protection Program	(9,000)	116,000
Net cash provided by financing activities	**2,218,831**	**223,926**
Increase (decrease) in cash and cash equivalents	1,488,096	(40,903)
Cash and cash equivalents, beginning of period	912,361	96,011
Cash and cash equivalents, end of period	$ 2,400,457	$ 55,108
SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION AND NON-CASH ACTIVITIES:		
Interest paid	$ 25,328	$ —
Accretion of Series A redeemable, convertible preferred stock dividend	$ 17,667	$ 21,200
Accretion of Series A redeemable, convertible preferred stock issuance costs and fair value adjustment	$ 56,245	$ 71,047
Accretion of Series B redeemable, convertible preferred stock dividend	$ 31,258	$ 37,509
Accretion of Series B redeemable, convertible preferred stock issuance costs	$ 2,736	$ 3,284
Accretion of Series C redeemable, convertible preferred stock dividend	$ 16,727	$ —
Accretion of Series C redeemable, convertible preferred stock issuance costs	$ 3,234	$ —
Exercise of warrants through debt principal conversion	$ 132,383	$ —
Conversion of preferred stock into common stock	$ 4,005,982	$ —
Conversion of amended 2017 convertible notes	$ 580,000	$ —
Reclassification of derivative warrant liability into additional paid-in capital	$ 145,953	$ —
Fair value of warrants for common stock issued for services	$ 180,339	$ —

See notes to unaudited condensed consolidated financial statements.

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. NATURE OF OPERATIONS AND BASIS OF PRESENTATION

Business

Bluejay Diagnostics, Inc. (the "Company") commenced its activities on March 20, 2015 incorporated under the laws of the State of Delaware. The Company is a mission-driven in-vitro diagnostic company that aims to develop and market minimally-invasive Point-of-Care ("POC") diagnostics tests and devices that provide patients and providers with access to affordable and timely healthcare. The Company's focus is on the infectious disease, inflammation, and oncology markets.

The Company is pursuing biomarker detection of Sepsis, Cancer and other diseases, utilizing the Symphony technology platform and Symphony IL-6 test licensed from Toray Industries, Inc. of Japan (see Note 3). The Company is also developing biomarkers for detection of other diseases such as Cardiac Ishcemia and Congestive Heart Failure.

The Company's ALLEREYE diagnostic test ("ALLEREYE") is a POC device that offers healthcare providers a cost effective, reliable, easy to use solution for diagnosis of Allergic Conjunctivitis. ALLEREYE received clearance by the U.S. Food and Drug Administration (the "FDA") in October 2017.

On June 4, 2021, the Company created Bluejay Spinco, LLC, ("SpinCo") a wholly owned subsidiary of the Company, for purposes of further development of ALLEREYE. The Company transferred assets and liabilities related to ALLEREY to SpinCo in accordance with the Contribution and Assumption Agreement. The assets and liabilities were transferred from the Company to SpinCo at their carrying value. The Company is responsible for the operational activities of SpinCo and bears all costs necessary to operate SpinCo. The Company's CEO is also the CEO of SpinCo and oversees the business strategy and operations of SpinCo.

Since its inception, the Company has devoted substantially all of its efforts to business planning, sales and marketing, research and development, and raising capital.

Risks and Uncertainties

The Company is subject to a number of risks similar to other companies in its industries, including rapid technological change, competition from larger pharmaceutical and biotechnology companies and dependence on key personnel.

The extent of the impact of the COVID-19 pandemic on the Company's business continues to be highly uncertain and difficult to predict, as the responses that the Company, other businesses and governments are taking continue to evolve. Furthermore, capital markets and economies worldwide have also been negatively impacted by the COVID-19 pandemic, and it is possible that it could cause a lasting national and/or global economic recession. Policymakers around the globe have responded with fiscal policy actions to support the healthcare industry and economy as a whole.

To date, the Company has experienced significant changes in the business as a result of the COVID-19 pandemic. The impact has delayed the Company's ability to generate revenue as result of the diversification of potential customer budgets towards the COVID-19 pandemic. The extent to which the COVID-19 pandemic may in the future materially impact the Company's financial condition, liquidity or results of operations is uncertain.

Stock Split

On June 7, 2021, the Company's Board of Directors declared a stock dividend of 2.15 shares of common stock for every share of common stock ("Stock Split"). This stock dividend was deemed a large stock dividend and was treated as a 1-for-3.15 stock split. The common stock shares and per share amounts (other than authorized shares) in these condensed consolidated financial statements and related notes have been retroactively restated to reflect the stock dividend for all periods presented.

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

1. NATURE OF OPERATIONS AND BASIS OF PRESENTATION (cont.)

Going concern

The accompanying condensed consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company has evaluated whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Company's ability to continue as a going concern. To date, the Company has experienced recurring losses from operations, and has a stockholders' deficit of $123,485 and negative working capital of $516,185 as of June 30, 2021. The Company has relied on raising capital and issuing debt to finance its operations.

The Company plans to raise capital through equity and/or debt financings and expects to generate revenue from sales to customers in the second half of 2021. There is no assurance, however, that the Company will be able to raise sufficient capital to fund its operations on terms that are acceptable, if at all, or generate profitable operations.

There is substantial doubt about the Company's ability to continue as a going concern within a year after the date that these condensed consolidated financial statements are issued. The unaudited condensed consolidated financial statements do not include any adjustments relating to the recoverability of recorded asset amounts that might be necessary as a result of the above uncertainty.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in conformity with generally accepted accounting principles in the United States ("US GAAP") consistent with those applied in, and should be read in conjunction with, the Company's audited financial statements and related footnotes for the year ended December 31, 2020. The unaudited condensed consolidated financial statements reflect all adjustments, which include only normal recurring adjustments, necessary for the fair presentation of the Company's financial position as of June 30, 2021, and its results of operations and cash flows for the six months ended June 30, 2021 and 2020, in accordance with US GAAP. The unaudited condensed consolidated financial statements do not include all of the information and footnotes required by US GAAP for complete financial statements, as allowed by the relevant U.S. Securities and Exchange Commission ("SEC") rules and regulations; however, the Company believes that its disclosures are adequate to ensure that the information presented is not misleading.

The results for the six months ended June 30, 2021 are not necessarily indicative of the results that may be expected for the full fiscal year ending December 31, 2021, or any other interim period with this fiscal year.

All intercompany balances and transactions have been eliminated in consolidation.

2. SIGNIFICANT ACCOUNTING POLICIES

During the six months ended June 30, 2021, there were no changes to the significant accounting policies as described in the 2020 Audited Financial Statements.

Use of estimates

The preparation of the Company's condensed consolidated financial statements and related disclosures in conformity with US GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosures of contingent liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Management evaluates its estimates on an ongoing basis. Although estimates are based on the Company's historical experience, knowledge of current events and actions it may undertake in the future, actual results may materially differ from these estimates and assumptions.

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

2. SIGNIFICANT ACCOUNTING POLICIES (cont.)

Derivative instruments

The Company generally does not use derivative instruments to hedge exposures to cash flow or market risks; however, certain warrants to purchase preferred stock that do not meet the requirements for classification as equity are classified as liabilities. In such instances, net-cash settlement is assumed for financial reporting purposes, even when the terms of the underlying contracts do not provide for a net-cash settlement. Such financial instruments are initially recorded at fair value with subsequent changes in value charged (credited) to operations each reporting period. If these instruments subsequently meet the requirements for classification as equity, the Company reclassifies the then fair value to equity.

The Company values its outstanding warrants using the Black-Scholes option pricing model.

On June 1, 2021, the Series B Warrants were amended to become exercisable into common stock. As a result, the Series B Warrants met the requirements for classification as equity, and were reclassified to additional paid-in capital (see Note 7). The Series B Warrants were remeasured at fair value immediately prior to the reclassification.

The fair value of the outstanding Series B redeemable preferred stock warrants (see Note 7) at June 1, 2021 and December 31, 2020 was based on the assumptions as follows:

	June 1, 2021	December 31, 2020
Risk-free interest rate	0.31% – 0.56%	0.17% – 0.36%
Dividend rate	0%	0%
Volatility	88.60%	88.60%
Expected life (in years)	2.81 – 4.22	3.23 – 4.64

Research and development expenses

Costs incurred for research and development are expensed as incurred. Research and development expenses primarily consist of salaries and related expenses for personnel, outside consulting services and sponsored research and the costs of materials and supplies used.

Redeemable Convertible Preferred Stock

The Company has classified redeemable, convertible preferred stock (“Preferred Stock”) as temporary equity in the accompanying condensed consolidated balance sheet at December 31, 2020 due to terms that allow for redemption of the shares upon certain events that are outside of the Company’s control. On June 1, 2021, the Company’s outstanding Preferred Stock was converted into common stock (see Note 8).

Segment Reporting

Management has determined that the Company has one operating segment, which is consistent with the Company structure and how it manages the business. As of June 30, 2021 and December 31, 2020, all of the Company’s assets were located in the United States.

Net Loss per Share

Basic net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock outstanding for the period, without consideration for potentially dilutive securities. Diluted net loss per share is computed by dividing the net loss by the weighted average number of shares of common stock and dilutive common stock equivalents outstanding for the period determined using the treasury stock and if-converted methods. Dilutive common stock equivalents are comprised of convertible preferred stock, convertible notes, and options outstanding under the Company’s stock option plan and warrants. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding as inclusion of the potentially dilutive securities would be antidilutive.

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

2. SIGNIFICANT ACCOUNTING POLICIES (cont.)

The following potential common shares were not considered in the computation of diluted net loss per share as their effect would have been anti-dilutive:

	June 30,	
	2021	2020
Redeemable, convertible preferred stock	—	2,434,359
Options to purchase common stock	375,826	361,928
Warrants for common stock	1,022,120	—
Warrants for Series B redeemable, convertible preferred stock	—	107,634
Convertible debentures	3,000,000	—

Grant Income

Grant income is recognized when the related work is performed and the qualifying research and development costs are incurred. Such costs are included as operating expenses in the Company's consolidated statement of operations. For the six-month period ended June 30, 2021, the Company recorded grant income of $75,000 received from a state agency, Massachusetts Growth Capital Corporation. No such grant was received in the six-months period ended June 30, 2020.

Newly Adopted Accounting Standards

In August 2020, the FASB issued ASU 2020-06, *Debt — Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40) Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*. This guidance changes how entities account for convertible instruments and contracts in an entity's own equity and simplifies the accounting for convertible instruments by removing certain separation models for convertible instruments. This guidance also modifies the guidance on diluted earnings per share calculations. This new guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2023. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company elected to early adopt this guidance in the first quarter of 2021. The adoption of this standard had no material impact on the Company's consolidated financial statements.

Management does not expect any recently issued, but not yet effective, accounting standards to have a material effect on its results of operations or financial condition.

3. BUSINESS AGREEMENTS

License and Development Agreement with Naval Medical Research Center

On March 7, 2019, the Company entered into a cooperative research and development agreement ("CRAD Agreement") with Naval Medical Research Center ("NMRC"). The objective of the agreement is for the development of lateral flow rapid test for sensitive and accurate diagnosis of various tick-borne diseases including Lyme disease. The CRAD Agreement grants the Company a non-exclusive, royalty-free, non-commercial research use license to any innovation made by NMRC occurring under the CRADA Agreement in performance of the objective. No payments were made in connection with the CRADA Agreement during the six month periods ended June 30, 2021 and 2020. The remaining commitment under the CRADA Agreement is $76,350 as of June 30, 2021 and December 31, 2020, and is included in accounts payable on the condensed consolidated balance sheet.

License and Supply Agreement with Toray

On October 6, 2020, the Company entered into a license and supply agreement ("Toray Agreement") with Toray Industries, Inc. ("Toray"). Under the Toray Agreement, the Company received the exclusive license to make and distribute the protein detection chips that has a function of automatic stepwise feeding of reagent ("Toray Chips")

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

3. BUSINESS AGREEMENTS (cont.)

outside of Japan. In exchange for the license, the Company committed to make two milestone payments of $120,000 each. The first milestone payment was made in January 2021, and the second milestone payment is due one year from the date in which the Toray Agreement was executed. Milestone payments totaling $120,000 and $240,000 were accrued for as of June 30, 2021 and December 31, 2020, respectively, and are included in current liabilities on the condensed consolidated balance sheet. In addition, following the first sale of Toray Chips, the Company will also make royalty payments to Toray equal to 15% of the net sales of the Toray Chips for the period that any underlying patents exist or for 5 years after the first sale. Following the first sale, the Company will pay a one-time minimum royalty of $60,000, which shall be creditable against any royalties owed to Toray in such calendar year. The Company will pay a minimum royalty of $100,000 in each year thereafter, which are creditable against any royalties owed to Toray in such calendar year. There were no sales of or revenues from the Toray Chips during the year ended December 31, 2020 or the six month period ended June 30, 2021.

4. FAIR VALUE MEASUREMENTS

Liabilities measured at fair value on a recurring basis at December 31, 2020 are summarized in the table below. There were no liabilities measured at fair value at June 30, 2021.

	December 31, 2020			
	Level 1	**Level 2**	**Level 3**	**Total**
Liabilities				
Derivative warrant liability	$ —	$ —	$ 155,629	$ —
	$ —	$ —	$ 155,629	$ —

The table below presents the changes in Level 3 liabilities measured at fair value on a recurring basis.

	Warrant Liability
Balance at December 31, 2020	$ 155,629
Unrealized gain	(9,676)
Fair value of Series B warrants converted into warrants for common stock	(145,953)
Balance at June 30, 2021	$ —

Unrealized gain (loss) on revaluation of derivative warrant liability is included in derivative warrant liability gain (loss) in the condensed consolidated statements of operations.

There are no assets measured at fair value on a recurring basis, nor are there assets or liabilities measured at fair value on a non-recurring on June 30, 2021 and December 31, 2020.

5. NOTES PAYABLE

2017 Notes Payable

In 2017, the Company entered into multiple Unit Purchase Agreements. In connection with this financing (the “Financing”), the Company issued 106 Units at a purchase price of $20,000 each. A Unit consisted of 100 shares of Series A redeemable, convertible preferred stock (“Series A”) at a purchase price of $100 per share (“Original Offering Price”) and $10,000 in notes payable (the “Notes”). Gross proceeds from the Financing were $2,120,000 and were allocated between the Notes and Series A based on their relative fair values with $1,643,349 allocated to the Notes and $476,651 to the Series A.

Certain Notes with aggregate principal amount of $930,000 mature on March 20, 2022 while $130,000 of the Notes mature on June 22, 2022. The Notes bear interest at 5% per annum, increasing to 7% on the amounts in default. For the first twelve months following issuance of the Notes, interest accrued on the Notes was added to

5. NOTES PAYABLE (cont.)

the principal balance of the Notes and not paid out to investors. The Notes require principal payments of $265,000 per year commencing in 2019 on the second anniversary of the Notes' issuance and annually thereafter, until the final principal payment upon maturity. For the year ended December 31, 2020, no principal payments were made to investors and the remaining unpaid balance on the Notes became immediately due and was classified as short-term at December 31, 2020. The Company defaulted on the Notes in January 2021. The Notes, plus any related accrued interest, are secured by all business assets of the Company and are fully guaranteed by Lana Management and Business Research International, LLC ("LMBRI"), a related party (see Note 9).

The allocation of the gross proceeds from the Financing resulted in recording a premium on the Notes of $583,349. The premium is amortized over the term of the Notes. As a result of the event of default in January 2021 and the Notes becoming due on demand, the Company accelerated the amortization of the premium and discount and amortized the remaining balances during the six month period ended June 30, 2021. The Company recognized the amortization of the premium of $145,837 and $58,335 as a reduction to non-cash interest expense during the six months ended June 30, 2021 and 2020, respectively. The premium amortization was included in the interest income (expense) on the condensed consolidated statements of operations.

In connection with the Financing, the Company paid $183,194 in issuance costs of which $91,597 was recorded as a discount on the Notes and is being amortized over the term of the Notes. The remaining $91,597 was netted with the proceeds allocated to Series A (see Note 8). The Company recognized the amortization of the discount of $22,899 and $9,160 as non-cash interest expense during the six months ended June 30, 2021 and 2020, respectively. The discount amortization was included in the interest income (expense) on the condensed consolidated statements of operations.

On February 17, 2021, the Company repaid in cash $268,000 in principal and $2,010 in accrued interest on the Notes and entered into an agreement to settle the remaining principal balance of $580,000 either through conversion into equity shares or in cash.

On May 26, 2021, the remaining Notes were amended and restated (the "Amended Notes"). The Amended Notes accrue no interest and are due in May 2023. The Amended Notes are automatically convertible into a number of shares of common stock at the conversion rate of $1.00 per share upon the issuance by the Company of securities to Sabby Volatility Warrant Master Fund, Ltd ("Sabby") (the "Sabby Agreement") (see Note 6), resulting in gross proceeds of at least $3,000,000. For the six months ended June 30, 2021 and 2020, the interest expense on the Notes was $6,360 and $24,565, respectively.

The Amended Notes principal automatically converted on June 8, 2021 into 580,000 shares of common stock upon the issuance of $3,000,000 in Convertible Debentures to Sabby as discussed in Note 6. The amendment and subsequent conversion of the Notes was accounted for as the debt settlement in equity under ASC 470-60 *Troubled Debt Restructurings by Debtors*. The Company recognized a gain on extinguishment of $6,360, equal to the difference between the carrying amount of the Notes at the conversion date, totaling $586,360, and the fair value of the common stock shares issued to the noteholders of $580,000. This gain on extinguishment is included in other income on the condensed consolidated statement of operations for the six months ended June 30, 2021.

2020 Subordinated Promissory Notes

On October 22, 2020, the Company issued $154,000 in subordinated promissory notes ("Subordinated Notes") to the Company's shareholders, including $30,000 to LMBRI. The Subordinated Notes accrued interest at 8% payable at each quarter end and had a maturity date of March 31, 2021. The Company defaulted on the Subordinated Notes on March 31, 2021, and the Subordinated Notes started to accrue 15% penalty interest starting on the date of default. For the six months ended June 30, 2021, interest expense on the Subordinated Notes was $7,443.

In conjunction with the issuance of the Subordinated Notes, the Company issued to each noteholder warrants to purchase shares of the Company's common stock ("Common Stock Warrants") totaling 4,846,688 Common Stock Warrants, of which 944,160 were issued to LMBRI. The Common Stock Warrants have an exercise price of $0.03 per

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

5. NOTES PAYABLE (cont.)

share, and are exercisable upon issuance date and have a 5-year term. The Common Stock Warrants may be exercised for cash or through cancellation of the Subordinated Notes. The fair value of the Common Stock Warrant at the issuance date was estimated to be $4,488,570 using a Black-Scholes option pricing model.

The Common Stock Warrants were accounted for as equity under ASC 815 — *Derivatives and Hedging*. The proceeds from the issuance of the Subordinated Notes were allocated between the Subordinated Notes and the Common Stock Warrants based on their relative fair values, with $5,108 allocated to the Subordinated Notes and $148,892 allocated to the Common Stock Warrants. The proceeds allocated to the Common Stock Warrants were recorded in additional paid-in capital on the accompanying balance sheet as of December 31, 2020.

The allocation of the proceeds to the Common Stock Warrants resulted in a discount to the Subordinated Notes of $148,892. The Company is amortizing this discount through non-cash interest expense using the effective interest method, of which $83,752 was amortized during the six months ended June 30, 2021 and included in the interest income (expense) in the condensed consolidated statement of operations.

On June 7, 2021, the holders of $132,383 in principal of the 2020 Subordinated Promissory Notes elected to exercise their warrants into 4,166,357 shares of common stock, with the principal from those notes applied to the exercise price of the warrants. The remaining $21,617 principal amount of the 2020 Subordinated Promissory Notes was repaid in cash and the related warrants to purchase 680,331 shares of common stock remain outstanding at June 30, 2021.

6. CONVERTIBLE DEBENTURES

On June 7, 2021, the Company entered into a Securities Purchase Agreement with Sabby, under which the Company committed to sell, and Sabby agreed to purchase, an aggregate of $4,500,000 principal amount of debentures, of which $3,000,000 upon execution of the agreement and the remaining $1,500,000 within three trading days of the later of (i) the date that the Company files the Registration Statement with the SEC and (ii) the date that the Company files the registration statement registering the shares of Common Stock to be issued in the initial public offering (“IPO”).

On June 8, 2021, the Company issued a total of $3,000,000 of 7.5% Senior Secured Convertible Debentures (the “Convertible Debentures”) to Sabby. The Convertible Debentures are due on May 31, 2022 and secured by all of the Company’s assets except for the assets transferred to SpinCo. The Convertible Debentures’ principal amount is convertible, at the holder’s option, into the Company’s Series D Convertible Preferred Stock (Series D) at $1,000 conversion price per share. The Convertible Debenture will also automatically convert into Series D upon the effectiveness of an IPO. The Company is obligated to pay interest on the Convertible Debentures at the rate of 7.5% per annum, payable quarterly on January 1, April 1, July 1 and October 1, beginning on July 1, 2021, on each Conversion Date (as to that principal amount then being converted), on the Forced Conversion Date (as to that principal amount then being converted) and on the Maturity Date in cash.

The Company incurred $539,052 in issuance costs related to the Convertible Debentures, which were netted against the outstanding Convertible Debentures on the condensed consolidated balance sheet at June 30, 2021. The resulting discount is amortized over the term of the Convertible Debentures using the effective interest method. The Company recognized $40,956 of amortization of the discount during the six months ended June 30, 2021, which was included in the interest income (expense) in the condensed consolidated statement of operations.

Under the terms of the service agreement, the placement agent was entitled to a warrant for the Company’s shares as a compensation for its services in relation to the Sabby Investment. The warrant was deemed to be issued in July 2021 and the Company established a liability to the placement agent of $111,211 at June 30, 2021, which is included in other current liabilities in the condensed consolidated balance sheet.

For the six months ended June 30, 2021, interest expense on the Convertible Debentures was $16,543.

Subsequent to period end, on August 4, 2021, the Company issued the remaining $1,500,000 of Convertible Debentures to Sabby (see note 10).

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

7. WARRANTS

In March 2021, the Company granted to a financial advisor warrants to purchase 226,599 shares of the Company's common stock as consideration for services in connection with the planned IPO. The warrants are exercisable at any time from the issuance date at the exercise price of $3.177 per share of common stock, subject to adjustment based on the amounts raised in the IPO, and have a 5-year term. These warrants were accounted for as equity under ASC 815 — *Derivatives and Hedging*, and the grant date fair value was estimated to be $180,339 using a Black-Scholes option pricing model and is included in deferred offering costs at June 30, 2021.

The terms of the advisory services agreement also provide for an incentive bonus of $200,000 payable upon closing of the IPO if such a closing occurs on or before January 31, 2022. This amount will be recognized as offering costs upon the IPO.

The following assumptions were used in the Black-Scholes option pricing model to estimate the fair value of the Common Stock Warrants granted in the six months ended June 30, 2021:

Risk-free interest rate	0.26%
Dividend rate	0%
Volatility	106.00%
Expected life (in years)	5

The Series B Warrants issued in conjunction with the Series B (see Note 8) were accounted for as a derivative liability under ASC 480 — *Distinguishing Liabilities from Equity*. The fair value of Series B Warrants at the issuance date in 2020 and 2019 was determined to be $16,787 and $106,250, respectively.

On June 1, 2021, as a result of the conversion of Series B into common stock (see Note 8), the outstanding 731 Series B Warrants were amended to become exercisable into 115,190 shares of common stock at an exercise price of $7.23 per share ("Amended Series B Warrants"). The Amended Series B Warrants were accounted for as equity and reclassified from liabilities into additional paid-in capital at the fair value of $145,953 as of the amendment date.

The following table summarizes information with regard to warrants outstanding at June 30, 2021.

	Shares	Exercisable for	Weighted Average Exercise Price	Weighted Average Remaining Life (years)
Common Stock Warrants	1,022,120	Common Stock	$ 1.54	4.2

8. STOCKHOLDERS' EQUITY

Preferred Stock

The Company's Certificate of Incorporation, as amended on June 7, 2021, provides authorization for issuance of up to 35,000,000 shares, par value of $0.0001, of which 30,000,000 shares shall be common stock and 5,000,000 shares shall be preferred stock.

Prior to June 1, 2021, the Company had outstanding Series A redeemable, convertible preferred stock ("Series A"), Series B redeemable, convertible preferred stock ("Series B"), Series C redeemable, convertible preferred stock ("Series C"), collectively referred to as "Preferred Stock".

In connection with the Financing (see Note 5), the Company issued 10,600 shares of Series A. The allocation of proceeds from the Financing was based on the relative fair values of the Notes and Series A resulting in the Series A being recorded at $476,651, net of $91,597 of issuance costs. The Series A were being accreted to the redemption value through December 31, 2021, the redemption date. Accretion of the Series A to redemption value, including the accretion of dividends and issuance costs, was $73,912 and $92,247 for the six months ended June 30, 2021 and 2020, respectively.

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

8. STOCKHOLDERS' EQUITY (cont.)

On April 5, 2019, the Company entered into Subscription Agreements for the issuance of Series B (the "Series B Financing"). In connection with the Series B Financing, the Company issued 4,455 shares of Series B at a purchase price of $361.50 per share. Gross proceeds from the Series B Financing were approximately $1,610,000. The Subscription Agreements also specify that purchasers investing $150,000 or more in Series B were to be issued a five year stock purchase warrant ("Series B Warrants") exercisable into a total number of Series B shares equal to 15% of the purchase price divided by $361.50. A total of 622 Series B Warrants were issued in 2019 in connection with the Series B Financing.

In connection with the Series B Financing, in 2019 the Company entered into an Amended Subscription Agreement with an investor to issue additional Series B and warrants for committed proceeds up to $150,000, available to be drawn on within one year of the date of the closing of the offering. During 2019, the Company drew $100,000 of the committed amount and issued 277 shares of Series B and 41 Series B Warrants. Series B Warrants issued in 2019 expire between April 2024 and December 2024.

The remaining $50,000 commitment was drawn on in January 2020 and the Company issued 138 shares of Series B and 21 Series B Warrants. In July and August 2020, the Company issued additional 317 shares of Series B and 47 warrants to purchase Series B at an exercise price of $361.50 per share for gross proceeds of approximately $115,000. The Series B Warrants issued in 2020 expire between January and December 2025.

The Series B were subject to accretion to the redemption value through December 31, 2024, the redemption date. Accretion of the Series B to redemption value, including the accretion of dividends and issuance costs, was $33,994 and $40,793 for the six months ended June 30, 2021 and 2020, respectively.

On November 19, 2020, the Company entered into a Subscription Agreement for the issuance of Series C (the "Series C Financing") with Toray. In connection with the Series C Financing, the Company issued 636 shares of Series C at a purchase price of $1,578.50 per share. Proceeds from the Series C Financing, net of issuance costs, were $994,832.

The Series C were being accreted to the redemption value through December 31, 2021, the redemption date. Accretion of the Series C to redemption value, including the accretion of dividends and issuance costs, was $19,961 for the six months ended June 30, 2021.

On June 1, 2021, in connection with the debt financing by Sabby (see Note 6), the Company's Series A were converted into 1,668,016 shares of common stock, Series B were converted into 816,226 shares of common stock, and Series C were converted into 100,081 shares of common stock. The conversion was effected through the joint consent of the Company's Board of Directors and shareholders and was subject to and in accordance with each of the Certificate of Designation. As a result of the conversion, the temporary equity balances at the conversion date were reclassified into the stockholders' equity.

The Series A ranks senior to Series B and Series C. Series B is pari passu with the Series C. Significant terms of the Series A, Series B and Series C (collectively, "Preferred Stock") were as follows:

Voting

The holder of each share of Preferred Stock has the right to vote for each share of common stock into which such Preferred Stock could convert. Except as otherwise provided, the holders of Preferred Stock and Common Stock shall vote together as a single class.

Dividends

The holders of Preferred Stock shall be entitled to receive dividends at a rate per annum of 4%. Dividends shall accrue whether or not declared and are cumulative. The dividends shall be paid quarterly on the first day of March, June, September, and December only if and when declared by the Board of Directors. No dividends have been declared by the Company through June 30, 2021.

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

8. STOCKHOLDERS' EQUITY (cont.)

Liquidation Preference

In the event of any liquidation, dissolution or winding up of the Company, the holders of Series A shall be entitled to be paid out of the assets of the Company, after all creditors of the Company have been paid, before any payments shall be made to the holders of Series B, Series C and common stock, in the amount of the Original Offering Price per share, plus all accrued but unpaid dividends thereon. If insufficient assets and funds are available to permit payment to the Series A holders, then all available assets and funds shall be distributed to the Series A holders on a pro rata basis. All dividends accrued and unpaid to the date of such distribution shall be paid out of the assets of the Company before any distribution is made to the holders of any junior stock of the Company.

In the event of any liquidation, dissolution or winding up of the Company, the holders of Series B and Series C, which are pari passu stocks, shall be entitled to be paid out of the assets of the Company before any payments shall be made to the holders of the common stock, in the amount of the Original Offering Price per share, plus all accrued but unpaid dividends thereon. If insufficient assets and funds are available to permit payment to the Series B and Series C holders, then all available assets and funds shall be distributed to the Series B and Series C holders on a pro rata basis. All dividends accrued and unpaid to the date of such distribution shall be paid out of the assets of the Company before any distribution is made to the holders of any junior stock of the Company.

Conversion

Each share of Series A, Series B and Series C is entitled to convert into 157.36 shares of common stock at $0.64, $2.30 and $10.03 per share, respectively, at any time by the holder following issuance.

Redemption

If the Company has not had an Initial Public Offering, or has not been acquired by December 31, 2024, the Company will be required, upon request of the holders of at least two thirds of the outstanding shares, to redeem the outstanding Preferred Stock at the greater of (i) Original Offering Price, plus accrued dividends, or (ii) the fair market value as determined by an appraiser selected by Company who is reasonably acceptable to the holders of a majority of the outstanding Preferred Stock and paid for by the Company.

On June 7, 2021, the Company filed a certificate of designation of preferences, rights, and limitations with the state of Delaware for up to 4,500 shares of Series D convertible preferred stock ("Series D"). Each share of Series D shall have a par value of $0.0001 per share and a stated value equal to $1,000. There were no Series D issued or outstanding as of June 30, 2021. Significant terms of the Series D Preferred Stock are as follows:

Voting

The Series D shall have no voting rights.

Dividends

The holders shall be entitled to receive cumulative quarterly dividends at a rate of $7.5% per share per annum. The rate increases to 15% per share per annum after November 23, 2021. In the event of an IPO by the Company, no dividends shall accrue on the Preferred Stock following the IPO date.

Liquidation Preference

In the event of any liquidation, dissolution or winding up of the Company, the holders of Series D shall be entitled to be paid out of the assets of the Company, after all creditors of the Company have been paid, before any payments shall be made to the holders of Common Stock, in the amount equal to the Stated Value of $1,000 per share, plus all accrued but unpaid dividends thereon. If insufficient assets and funds are available to permit payment to the Series D holders, then all available assets and funds shall be distributed to the Series D holders on a pro rata basis.

Bluejay Diagnostics, Inc.
Notes to Condensed Consolidated Financial Statements
(Unaudited)

8. STOCKHOLDERS' EQUITY (cont.)

Conversion

Each share of Series D shall be convertible into 1,000 shares of Common Stock at $1.00 per share at any time by the holder following issuance.

2018 Stock Incentive Plan

In 2018, the Company adopted the 2018 Stock Incentive Plan (the "2018 Plan") for employees, consultants, and directors. The 2018 Plan, which is administered by the Board of Directors, permits the Company to grant incentive and nonqualified stock options for the purchase of common stock, and restricted stock awards. The maximum number of shares reserved for issuance under the 2018 Plan is 629,440. At June 30, 2021, there were 253,614 shares available for grant under the 2018 Plan.

There were no options grants or exercises for the six months ended June 30, 2021. There were 375,826 outstanding option grants at June 30, 2021 with the weighted average exercise price per share of $0.59, the weighted average remaining contractual life of 7.5 years and the aggregate intrinsic value of $154,528. There were 277,476 options exercisable at June 30, 2021 with the weighted average exercise price per share of $0.47, the weighted average remaining contractual life of 7.4 years and the aggregate intrinsic value of $147,453.

For the six months ended June 30, 2021 and 2020, the Company recorded stock-based compensation expense (benefit) of $319 and $(1,841), respectively, in connection with share-based payment awards, which is included in the general and administrative expenses in the condensed consolidated statements of operations. The forfeitures occurring during the six months ended June 30, 2020 resulted in the total negative stock compensation expense.

At June 30, 2021, there was approximately $495 of unrecognized compensation expense related to non-vested stock option awards that are expected to be recognized over a weighted-average period of 1 year. The weighted-average fair value of stock options granted for the six months ended June 30, 2020 under Black Scholes option pricing model, was $0.65 per share.

9. RELATED PARTY TRANSACTIONS

LMBRI has board members in common with the Company. Funds were advanced to the Company by LMBRI for operational and Food and Drug Administration ("FDA") pre-submission funding purposes since inception. Amounts payable to LMBRI from the Company at June 30, 2021 and December 31, 2020 were $115,102 and $125,102, respectively, and are included in due to related party on the condensed consolidated balance sheets. The outstanding balance due to LMBRI is payable upon demand.

The Company and LMBRI have entered into an Expense Sharing Agreement, whereby the Company will reimburse LMBRI monthly for certain shared expenses including insurance, rent, salaries, telephone, and other miscellaneous expenses. The Company is billed $4,000 monthly for these expenses. The Company incurred and paid LMBRI $24,000 for these shared expenses during each of the six month periods ended June 30, 2021 and 2020. Such amounts are included in general and administrative expenses on the accompanying condensed consolidated statements of operations.

10. SUBSEQUENT EVENTS

On July 6, 2021, the Company's board of directors and stockholders approved and adopted the Bluejay Diagnostics, Inc. 2021 Stock Plan. A total of 1,960,000 shares of common stock were approved to be initially reserved for issuance under the 2021 Stock Plan. The Company can continue to issue shares under the 2018 Plan (see Note 8).

On August 4, 2021, the Company issued the remaining $1,500,000 of the Convertible Debentures to Sabby under the agreement entered into on June 7, 2021 (see Note 6). The agreement provided for the purchase of an additional $1,500,000 Debentures at the filing of a registration statement in an Initial Public Offering, which was filed on July 22, 2021. The Debentures are convertible, at the holder's option, into the Company's Series D Convertible Preferred Stock at $1,000 conversion price per share.

Bluejay Diagnostics, Inc.

1,800,000 Units consisting of:

Common Stock

Class A Warrants

Class B Warrants

Dawson James Securities, Inc. **I-Bankers Direct, LLC**

PROSPECTUS

Dated , 2021

Through and including , 2021 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

Table of Contents

The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell, nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Subject to Completion Dated October 25, 2021.

4,500,000 Shares

Bluejay Diagnostics, Inc.

Common Stock

This prospectus relates to the resale of 4,500,000 shares of common stock underlying shares of Series D preferred stock held by the selling stockholder named in this prospectus. We will not receive any of the proceeds from the sale of shares of common stock by the selling stockholder named in this prospectus.

Any shares sold by the selling stockholder until our common stock is listed or quoted on an established public trading market will take place at $10.00, which is the public offering price of the shares of common stock we are selling in our initial public offering. Thereafter, any sales will occur at prevailing market prices or in privately negotiated prices. The distribution of securities offered hereby may be effected in one or more transactions that may take place in ordinary brokers' transactions, privately negotiated transactions or through sales to one or more dealers for resale of such securities as principals. Usual and customary or specifically negotiated brokerage fees or commissions may be paid by the selling shareholders. No sales of the shares covered by this prospectus shall occur until the common stock sold in our initial public offering begin trading on the NASDAQ Capital Market.

Prior to this offering, there has been no public market for our common stock. We intend to list the common stock on the NASDAQ Capital Market under the symbol "BJDX." If our common stock is not approved for listing on the NASDAQ Capital Market, we will not consummate this offering.

On _____, 2021, a registration statement under the Securities Act with respect to our initial public offering of shares of our common stock and warrants was declared effective by the Securities and Exchange Commission. We received approximately $15.57 million in net proceeds from the offering (assuming no exercise of the underwriters' over-allotment option) after payment of underwriting discounts and commissions and estimated expenses of the offering.

We are an "emerging growth company" as defined in Section 2(a) of the Securities Act of 1933, as amended, and we have elected to comply with certain reduced public company reporting requirements.

An investment in our common stock involves significant risks. You should carefully consider the risk factors beginning on page 11 of this prospectus before you make your decision to invest in our common stock.

Neither the Securities and Exchange Commission nor any other regulatory body has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2021

THE OFFERING

Common Stock being offered	4,500,000 shares of common stock
Shares of common stock outstanding after this offering	16,834,265 shares of common stock, assuming the issuance by us of 1,800,000 shares of our common stock pursuant to the Public Offering Prospectus filed contemporaneously herewith.
Use of proceeds	We will not receive any proceeds from the sale of common stock held by the selling stockholders being registered in this prospectus.
Proposed Nasdaq Symbol	BJDX
Risk factors	An investment in our securities involves a high degree of risk. See “Risk Factors” beginning on page 11 of this prospectus and other information included in this prospectus for a discussion of factors you should carefully consider before deciding to invest in our common stock.

USE OF PROCEEDS

We will not receive any of the proceeds from the sale of the common stock held by the selling stockholder named in this prospectus.

SELLING STOCKHOLDERS

The common stock being offered by the selling shareholder are those issuable to the selling shareholder upon conversion of the Series D preferred stock held by the selling shareholder. We are registering the shares of common stock in order to permit the selling shareholder to offer the shares for resale from time to time. Except for the ownership of the shares of the preferred stock, the selling shareholder has not had any material relationship with us within the past three years.

The table below lists the selling shareholder and other information regarding the beneficial ownership of the shares of common stock by the selling shareholder. The second column lists the number of shares of common stock beneficially owned by the selling shareholder, based on its ownership of the shares of preferred stock, as of _____, 2021, assuming conversion of the preferred stock held by the selling shareholder on that date, without regard to any limitations on exercises.

The third column lists the shares of common stock being offered by this prospectus by the selling shareholder.

In accordance with the terms of a registration rights agreement with the selling shareholder, this prospectus generally covers the resale of the maximum number of shares of common stock issuable upon conversion of the Series D preferred stock, determined as if the outstanding preferred stock were converted in full as of the trading day immediately preceding the date this registration statement was initially filed with the SEC, as of the trading day immediately preceding the applicable date of determination and all subject to adjustment as provided in the registration right agreement, without regard to any limitations on the conversion of the preferred stock. The fourth column assumes the sale of all of the shares offered by the selling shareholders pursuant to this prospectus.

Under the terms of the preferred stock, the selling shareholder may not convert the preferred stock to the extent such conversion would cause the selling shareholder, together with its affiliates and attribution parties, to beneficially own a number of shares of common stock which would exceed 4.99% or 9.99%, as applicable, of our then outstanding common stock following such exercise, excluding for purposes of such determination shares of common stock issuable upon conversion of such preferred stock which have not been converted. The number of shares in the second and fourth columns do not reflect this limitation. The selling shareholders may sell all, some or none of their shares in this offering. See “Plan of Distribution.”

Name of Selling Shareholder	Number of Shares of Common Stock Owned Prior to Offering	Maximum Number of shares of Common Stock to be Sold Pursuant to this Prospectus	Number of shares of Common Stock Owned After Offering
Sabby Volatility Warrant Master Fund, Ltd.[1]	4,500,000	4,500,000	—

(1) Sabby Management, LLC, the investment manager of Sabby Volatility Warrant Master Fund, Ltd., and Hal Mintz, manager of Sabby Management, LLC, may be deemed to share voting and dispositive power with respect to these securities. Each of Sabby Management, LLC and Hal Mintz disclaims beneficial ownership over the securities listed except to the extent of their pecuniary interest therein.

SELLING STOCKHOLDER PLAN OF DISTRIBUTION

The selling stockholder (the "Selling Stockholder") of the securities and any of its pledgees, assignees and successors-in-interest may, from time to time, sell any or all of their securities covered hereby on the principal Trading Market or any other stock exchange, market or trading facility on which the securities are traded or in private transactions. These sales may be at fixed or negotiated prices. A Selling Stockholder may use any one or more of the following methods when selling securities:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales;
- in transactions through broker-dealers that agree with the Selling Stockholders to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law.

The Selling Stockholder may also sell securities under Rule 144 or any other exemption from registration under the Securities Act of 1933, as amended (the "Securities Act"), if available, rather than under this prospectus.

Broker-dealers engaged by the Selling Stockholder may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the Selling Stockholder (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this Prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2121; and in the case of a principal transaction a markup or markdown in compliance with FINRA Rule 2121.

In connection with the sale of the securities or interests therein, the Selling Stockholder may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The Selling Stockholder may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The Selling Stockholder may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Stockholder and any broker-dealers or agents that are involved in selling the securities may be deemed to be "underwriters" within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. The Selling Stockholder has informed the Company that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

The Company is required to pay certain fees and expenses incurred by the Company incident to the registration of the securities. The Company has agreed to indemnify the Selling Stockholder against certain losses, claims, damages and liabilities, including liabilities under the Securities Act.

We agreed to keep this prospectus effective until the earlier of (i) the date on which the securities may be resold by the Selling Stockholders without registration and without regard to any volume or manner-of-sale limitations by reason of Rule 144, without the requirement for the Company to be in compliance with the current public information under Rule 144 under the Securities Act or any other rule of similar effect or (ii) all of the securities have been sold pursuant to this prospectus or Rule 144 under the Securities Act or any other rule of similar effect. The resale securities will be sold only through registered or licensed brokers or dealers if required under applicable state securities laws. In addition, in certain states, the resale securities covered hereby may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale securities may not simultaneously engage in market making activities with respect to the common stock for the applicable restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholder and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

LEGAL MATTERS

The validity of the common stock being offered by this prospectus will be passed upon for us by Schiff Hardin LLP, Washington, DC.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The estimated expenses payable by us in connection with the offering described in this registration statement (other than the underwriting discounts) will be as follows:

SEC registration fee	$	25,000
FINRA filing fee	$	25,000
Nasdaq Capital Market initial listing fee	$	75,000
Accounting fees and expenses	$	355,000
Printing and engraving expenses	$	30,000
Legal fees and expenses	$	410,000
Miscellaneous	$	68,000[(1)]
Total	$	988,000

(1) This amount represents additional expenses that may be incurred by the registrant in connection with the offering over and above those specifically listed above, including distribution and mailing costs.

Item 14. Indemnification of Directors and Officers.

Pursuant to Section 145 of the Delaware General Corporation Law (the "DGCL"), a corporation shall have the power to indemnify 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 (other than a derivative action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or serving at the request of such corporation in such capacity for another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, if such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of such corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

The DGCL also permits indemnification by a corporation under similar circumstances for expenses (including attorneys' fees) actually and reasonably incurred by such persons in connection with the defense or settlement of a derivative action or suit, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to such corporation unless the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

To the extent a present or former director or officer is successful in the defense of such an action, suit or proceeding referenced above, or in defense of any claim, issue or matter therein, a corporation is required by the DGCL to indemnify such person for actual and reasonable expenses incurred in connection therewith. Expenses (including attorneys' fees) incurred by such persons in defending any action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding upon in the case of a current officer or director, receipt of an undertaking by or on behalf of such person to repay such amount if it is ultimately determined that such person is not entitled to be so indemnified.

The DGCL provides that the indemnification described above shall not be deemed exclusive of other indemnification that may be granted by a corporation pursuant to its bylaws, disinterested directors' vote, stockholders' vote and agreement or otherwise.

Section 102(b)(7) of the DGCL enables a corporation, in its certificate of incorporation or an amendment thereto, to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for violations of the directors' fiduciary duty, except (i) for any breach of the director's duty of loyalty to the

corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit. The Registrant's certificate of incorporation provides for such limitations on liability for its directors.

The DGCL also provides corporations with the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation in a similar capacity for another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him or her against such liability as described above. In connection with this offering, the Registrant will obtain liability insurance for its directors and officers. Such insurance would be available to its directors and officers in accordance with its terms.

The Registrant's certificate of incorporation requires the Registrant to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "covered person") who was or is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding") by reason of the fact that he or she is or was a director, officer or member of a committee of the Registrant, or, while a director or officer of the Registrant, is or was serving at the request of the Registrant as a director or officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees), judgment, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with a proceeding.

In addition, under the Registrant's certificate of incorporation, in certain circumstances, the Registrant shall pay the expenses (including attorneys' fees) incurred by a covered person in defending a proceeding in advance of the final disposition of such proceeding; provided, however, that the Registrant shall not be required to advance any expenses to a person against whom the Registrant directly brings an action, suit or proceeding alleging that such person (1) committed an act or omission not in good faith or (2) committed an act of intentional misconduct or a knowing violation of law. Additionally, an advancement of expenses incurred by a covered person shall be made only upon delivery to the Registrant of an undertaking, by or on behalf of such covered person, 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 or otherwise in accordance with Delaware law that such covered person is not entitled to be indemnified for such expenses.

Pursuant to the underwriting agreement filed as Exhibit 1.1 to this Registration Statement, we have agreed to indemnify the underwriters and the underwriters have agreed to indemnify us against certain civil liabilities that may be incurred in connection with this has, including certain liabilities under the Securities Act.

Item 15. Recent Sales of Unregistered Securities.

During the past three years, we sold the following shares of common stock, preferred stock, promissory notes and warrants without registration under the Securities Act:

In April 2019, we issued 4,455 shares of Series B preferred stock at a purchase price of $361.50 per share. We also issued 622 Series B warrants in connection with the Series B preferred stock financing. Through the rest of 2019 we issued an additional 277 shares of Series B preferred stock and 41 warrants for gross proceeds of $100,000. In 2020, we issued 456 additional shares of Series B preferred stock and 68 warrants for gross proceeds of $50,000. The 731 warrants convertible into Series B preferred stock were adjusted and restated to convert into 36,600 shares of common stock and following the split were convertible into 115,190 shares of common stock. All of the foregoing issuances were made to accredited investors.

On October 22, 2020, we issued $154,000 of 8% subordinated promissory notes ("Subordinated Notes") to related party shareholders, as well as warrants to purchase 1,154,000 shares of common stock at $0.10 per share, exercisable in cash or through cancellation of the notes. All warrants were adjusted and restated to be convertible to common stock on June 1, 2021. On June 7, 2021 all notes were converted to common stock pursuant to related warrants or repaid.

On December 2020, we issued 636 shares of Series C preferred stock at a purchase price of $1,578.50 per share and received proceeds, net of issuance costs of approximately $995,000. All shares were converted to common stock in June 2021. All of the foregoing issuances were made to accredited investors.

In June 2021, we entered into an agreement to issue a total of $4.5 million of 7.5% Senior Secured Convertible Debentures (the "Debentures"), of which $3.0 million in principal amount of the Debentures were issued at closing and $1.5 million in principal amount of the Debentures were issued in August 2021. The Debentures are convertible, at the investor's option, into our Series D Preferred Stock at a conversion price of $1,000 per share. The foregoing issuances were made to an accredited investor.

All of the securities above were issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act or Regulation D promulgated thereunder.

Item 16. Exhibits and Financial Statement Schedules.

The following exhibits are filed as part of this Registration Statement:

Exhibit No.	Description
1.1	Form of Underwriting Agreement.
3.1	Amended and Restated Certificate of Incorporation.
3.2	Amended and Restated Bylaws.
4.1	Specimen Common Stock Certificate.
4.2	Form of Class A Warrant.
4.3	Form of Class B Warrant.
4.4	Form of Warrant Agency Agreement.
4.5	Form of Underwriters' Warrant.*
5.1	Opinion of Schiff Hardin LLP
10.1	2021 Stock Plan.
10.2	License and Supply Agreement dated October 6, 2020 by and between Toray Industries, Inc. and Bluejay Diagnostics, Inc.
10.3	Employment Agreement dated July 1, 2021 between Neil Dey and Bluejay Diagnostics, Inc.
10.4	Employment Agreement dated July 1, 2021 between Gordon Kinder and Bluejay Diagnostics, Inc.
10.5	Employment Agreement dated July 1, 2021 between Jason Cook and Bluejay Diagnostics, Inc.
10.6	Employment Agreement dated July 1, 2021 between Kevin Vance and Bluejay Diagnostics, Inc.
10.7	Securities Purchase Agreement dated June 7, 2021 between certain purchasers and Bluejay Diagnostics, Inc.
10.8	Registration Rights Agreement dated June 7, 2021 between certain purchasers and Bluejay Diagnostics, Inc.
10.9	Amendment to License and Supply Agreement dated July 21, 2021 by and between Toray Industries, Inc. and Bluejay Diagnostics, Inc.
14.1	Code of Ethics.
21.1	List of Subsidiaries.
23.1	Consent of Wolf and Company, P.C.
23.2	Consent of Schiff Hardin LLP (to be included in Exhibit 5.1).
24.1	Power of Attorney (previously included on the signature page of this Registration Statement).
99.1	Audit Committee Charter
99.2	Nominating Committee Charter
99.3	Compensation Committee Charter
99.4	Consent of Gary Gemignani**

* To be filed by amendment.
** Previously filed

Item 17.Undertakings.

(b) The undersigned hereby undertakes to provide to the underwriter at the closing specified in the underwriting agreements, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 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 such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(d) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, each registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Acton, Commonwealth of Massachusetts, on the 25th day of October, 2021.

BLUEJAY DIAGNOSTICS INC.

By: /s/ Neil Dey
Name: Neil Dey
Title: Chief Executive Officer and President

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Name	Position	Date
/s/ Neil Dey Neil Dey	President, Chief Executive Officer and Director	October 25, 2021
/s/ Gordon Kinder Gordon Kinder	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	October 25, 2021
* Douglas Wurth	Chairman of the Board	October 25, 2021
* Svetlana Dey	Director	October 25, 2021
* Donald R. Chase	Director	October 25, 2021
* Fred S. Zeidman	Director	October 25, 2021

_____

* Pursuant to power of attorney

By: /s/ Gordon Kinder
Gordon Kinder
Attorney-in-fact

Exhibit 1.1

_____ SHARES OF COMMON STOCK,

_____ SHARES OF PREFERRED STOCK,

AND

_____ WARRANTS OF

BLUEJAY DIAGNOSTICS, INC.

UNDERWRITING AGREEMENT

November __, 2021

Dawson James Securities, Inc.
As the Representative of the
Several underwriters, if any, named in Schedule I hereto
c/o Dawson James Securities, Inc.
1 North Federal Highway, 5th Floor
Boca Raton, FL 33432

Ladies and Gentlemen:

The undersigned, Bluejay Diagnostics, Inc., a company incorporated under the laws of Delaware (collectively with its subsidiaries and affiliates, including, without limitation, all entities disclosed or described in the Registration Statement as being subsidiaries or affiliates of Bluejay Diagnostics, Inc., the "Company"), hereby confirms its agreement (this "Agreement") with the several underwriters (such underwriters, including the Representative (as defined below), the "Underwriters" and each an "Underwriter") named in Schedule I hereto for which Dawson James Securities, Inc. is acting as representative to the several Underwriters (the "Representative" and if there are no Underwriters other than the Representative, references to multiple Underwriters shall be disregarded and the term Representative as used herein shall have the same meaning as Underwriter) on the terms and conditions set forth herein.

It is understood that the several Underwriters are to make a public offering of the Public Securities as soon as the Representative deems it advisable to do so. The Public Securities are to be initially offered to the public at the public offering price set forth in the Prospectus.

It is further understood that you will act as the Representative for the Underwriters in the offering and sale of the Closing Securities and, if any, the Option Securities in accordance with this Agreement.

ARTICLE I.
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Certificate of Designation (as defined herein) and (b) the following terms have the meanings set forth in this Section 1.1:

"Action" shall have the meaning ascribed to such term in Section 3.1(k).

"Affiliate" means with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such Person as such terms are used in and construed under Rule 405 under the Securities Act.

"Board of Directors" means the board of directors of the Company.

"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; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

"Certificate of Designation" means the Certificate of Designation to be filed prior to the Closing by the Company with the Secretary of State of Delaware in the form of Exhibit F attached hereto.

"Closing" means the closing of the purchase and sale of the Closing Securities pursuant to Section 2.1.

"Closing Date" means the hour and the date on the Trading Day on which all conditions precedent to (i) the Underwriters' obligations to pay the Closing Purchase Price and (ii) the Company's obligations to deliver the Closing Securities, in each case, have been satisfied or waived, but in no event later than 10:00 a.m. (New York City time) on the second (2^{nd}) Trading Day following the date hereof or at such earlier time as shall be agreed upon by the Representative and the Company.

"Closing Preferred Shares" shall have the meaning ascribed to such term in Section 2.1(a)(ii).

"Closing Purchase Price" shall have the meaning ascribed to such term in Section 2.1(b), which aggregate purchase price shall be net of the underwriting discounts and commissions.

"Closing Securities" shall have the meaning ascribed to such term in Section 2.1(a)(ii).

"Closing Shares" shall have the meaning ascribed to such term in Section 2.1(a)(i).

"Closing Warrants" shall have the meaning ascribed to such term in Section 2.1(a)(iv).

"Combined Purchase Price" shall have the meaning ascribed to such term in Section 2.1(b).

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company Auditor" means Wolf & Company, P.C., with offices located at 255 State Street, Boston, Massachusetts 02109.

"Company Counsel" means Schiff Hardin LLP, with offices located at 901 K Street NW, Suite 700, Washington, DC 20001.

"Conversion Price" shall have the meaning ascribed to such term in the Certificate of Designation.

"Conversion Shares" shall have the meaning ascribed to such term in the Certificate of Designation.

"Effective Date" shall have the meaning ascribed to such term in Section 3.1(f).

"EGS" means Ellenoff Grossman & Schole LLP, with offices located at 1345 Avenue of the Americas, New York, New York 10105.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Execution Date" shall mean the date on which the parties execute and enter into this Agreement.

"Exempt Issuance" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities or to extend the term of such securities, and (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that such securities are issued as "restricted securities" (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith within 180 days following the Closing Date, and provided that any such issuance shall only be to a Person (or to the equity holders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"FINRA" means the Financial Industry Regulatory Authority.

"GAAP" shall have the meaning ascribed to such term in Section 3.1(i).

"Indebtedness" means (a) any liabilities for borrowed money or amounts owed in excess of $50,000 (other than trade accounts payable incurred in the ordinary course of business), (b) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (c) the present value of any lease payments in excess of $50,000 due under leases required to be capitalized in accordance with GAAP.

"Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

"Lock-Up Agreements" means the lock-up agreements that are delivered on the date hereof by each of the Company's officers and directors and each holder of Common Stock and Common Stock Equivalents holding, on a fully diluted basis, more than 5% of the Company's issued and outstanding Common Stock, in the form of Exhibit E attached hereto.

"Material Adverse Effect" means (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document.

"Offering" shall have the meaning ascribed to such term in Section 2.1(c).

"Option Closing Date" shall have the meaning ascribed to such term in Section 2.2(c).

"Option Closing Purchase Price" shall have the meaning ascribed to such term in Section 2.2(b), which aggregate purchase price shall be net of the underwriting discounts and commissions.

"Option Securities" shall have the meaning ascribed to such term in Section 2.2(a).

"Option Shares" shall have the meaning ascribed to such term in Section 2.2(a)(i).

"Option Warrants" shall have the meaning ascribed to such term in Section 2.2(a).

"Over-Allotment Option" shall have the meaning ascribed to such term in Section 2.2.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Preferred Stock" means shares of the Company's Series E Convertible Preferred Stock issued or issuable pursuant to Section 2.1(a)(ii) and having the rights, preferences and privileges set forth in the Certificate of Designation.

"Preferred Stock Agency Agreement" means the addendum to the Company's Transfer Agency and Registrar Services Agreement with the Transfer Agent, pursuant to which the Transfer Agent agrees to act as transfer agent and conversion agent for the Preferred Stock, in the form of Exhibit G attached hereto.

"Preliminary Prospectus" means, if any, any preliminary prospectus relating to the Securities included in the Registration Statement or filed with the Commission pursuant to Rule 424(b).

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Prospectus" means the final prospectus filed for the Registration Statement.

"Prospectus Supplement" means, if any, any supplement to the Prospectus complying with Rule 424(b) of the Securities Act that is filed with the Commission.

"Public Securities" means, collectively, the Closing Securities and, if any, the Option Securities.

"Registration Statement" means, collectively, the various parts of the registration statement prepared by the Company on Form S-1 (File No. 333-232557) with respect to the Securities, each as amended as of the date hereof, including the Prospectus and Prospectus Supplement, if any, the Preliminary Prospectus, if any, and all exhibits filed with or incorporated by reference into such registration statement, and includes any Rule 462(b) Registration Statement.

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Rule 462(b) Registration Statement" means any registration statement prepared by the Company registering additional Public Securities, which was filed with the Commission on or prior to the date hereof and became automatically effective pursuant to Rule 462(b) promulgated by the Commission pursuant to the Securities Act.

"SEC Reports" shall have the meaning ascribed to such term in Section 3.1(i).

"Securities" means the Closing Securities, the Option Securities and the Underlying Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Series A Warrants" means, collectively, the Common Stock purchase warrants delivered to the Underwriters in accordance with Section 2.1(a)(iii) and Section 2.2, which Warrants shall be exercisable immediately and have a term of exercise equal to five (5) years, in the form of Exhibit D-1 attached hereto.

"Series B Warrants" means, collectively, the Common Stock purchase warrants delivered to the Underwriters in accordance with Section 2.1(a)(iv) and Section 2.2, which Warrants shall be exercisable immediately and have a term of exercise equal to five (5) years, in the form of Exhibit D-2 attached hereto.

"Share Purchase Price" shall have the meaning ascribed to such term in Section 2.1(b).

"Shares" means, collectively, the shares of Common Stock delivered to the Underwriters in accordance with Section 2.1(a)(i) and Section 2.2(a).

"Subsidiary" means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

"Transaction Documents" means this Agreement, the Warrants, the Warrant Agency Agreement, the Certificate of Designation, the Preferred Stock Agency Agreement, the Lock-Up Agreements, and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means Continental Stock Transfer & Trust Company, with offices located at 17 Battery Place, New York, New York 10004, and any successor transfer agent of the Company.

"Underlying Shares" means, collectively, the Conversion Shares and the Warrant Shares.

"Warrant Agency Agreement" means the warrant agency agreement dated on or about the date hereof, among the Company and the Transfer Agent in the form of Exhibit D attached hereto.

"Warrant Purchase Price" shall have the meaning ascribed to such term in Section 2.1(b).

"Warrant Shares" means the shares of Common Stock issuable upon exercise of the Warrants.

"Warrants" means, collectively, the Series A Warrants and the Series B Warrants.

ARTICLE II.
PURCHASE AND SALE

2.1 Closing.

(a) Upon the terms and subject to the conditions set forth herein, the Company agrees to sell in the aggregate ____ shares of Common Stock, _____ shares of Preferred Stock, _____ Series A Warrants, and _____ Series B Warrants, and each Underwriter agrees to purchase, severally and not jointly, at the Closing, the following securities of the Company:

(i) the number of shares of Common Stock (the "Closing Shares") set forth opposite the name of such Underwriter on Schedule I hereof;

(ii) the number of shares of Preferred Stock (the "Closing Preferred Shares") set forth opposite the name of such Underwriter on Schedule I hereof;

(iii) Series A Warrants to purchase up to ___% of the sum of the number of Closing Shares set forth opposite the name of such Underwriter on Schedule I hereof plus the aggregate number of Conversion Shares underlying the Closing Preferred Shares set forth opposite the name of such Underwriter on Schedule I hereof, which Warrants shall have an exercise price of **$____**, subject to adjustment as provided therein; and

(iv) Series B Warrants to purchase up to ____% of the sum of the number of Closing Shares set forth opposite the name of such Underwriter on Schedule I hereof plus the aggregate number of Conversion Shares underlying the Closing Preferred Shares set forth opposite the name of such Underwriter on Schedule I hereof (together with the Series A Warrants, the "Closing Warrants" and, collectively with the Closing Shares and the Closing Preferred Shares, the "Closing Securities"), which Warrants shall have an exercise price of **$____**, subject to adjustment therein.

(b) The aggregate purchase price for the Closing Securities shall equal the amount set forth opposite the name of such Underwriter on Schedule I hereto (the "Closing Purchase Price"). The combined purchase price for one Share (or one share of Preferred Stock), a Series A Warrant to purchase ____ Warrant Share, and a Series B Warrant to purchase ___ Warrant Share shall be $____ (the "Combined Purchase Price") which shall be allocated as $____ per Share (or share of Preferred Stock) (the "Share Purchase Price"), $____ per Series A Warrant, and $____ per Series B Warrant (the "Warrant Purchase Price"); and

(c) On the Closing Date, each Underwriter shall deliver or cause to be delivered to the Company, via wire transfer, immediately available funds equal to such Underwriter's Closing Purchase Price and the Company shall deliver to, or as directed by, such Underwriter its respective Closing Securities and the Company shall deliver the other items required pursuant to Section 2.3 deliverable at the Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.3 and 2.4, the Closing shall occur at the offices of EGS or such other location as the Company and Representative shall mutually agree. The Public Securities are to be offered initially to the public at the offering price set forth on the cover page of the Prospectus (the "Offering").

(d) The Company acknowledges and agrees that, with respect to any Notice(s) of Conversion (as defined in the Certificate of Designation) delivered by a Holder (as defined in the Certificate of Designation) on or prior to 12:00 p.m. (New York City time) on the Closing Date, which Notice(s) of Conversion may be delivered at any time after the time of execution of this Agreement, the Company shall deliver the Conversion Shares (as defined in the Certificate of Designation) subject to such notice(s) to the Holder by 4:00 p.m. (New York City time) on the Closing Date and the Closing Date shall be the Share Delivery Date (as defined in the Certificate of Designation) under the Certificate of Designation. The Company acknowledges and agrees that the Holders are third-party beneficiaries of this covenant of the Company.

2.2 Over-Allotment Option.

(a) For the purposes of covering any over-allotments in connection with the distribution and sale of the Closing Securities, the Representative is hereby granted an option (the "Over-Allotment Option") to purchase, in the aggregate, up to ___ shares of Common Stock (the "Option Shares"), Series A Warrants to purchase up to ____ shares of Common Stock (the "Series A Option Warrants"), and Series B Warrants to purchase up to ____ shares of Common Stock (the "Series B Option Warrants" and together with the Series A Option Warrants, the "Option Warrants" and, collectively with the Option Shares, the "Option Securities") which may be purchased in any combination of Option Shares and/or Option Warrants at the Share Purchase Price and/or Warrant Purchase Price, respectively.

(b) In connection with an exercise of the Over-Allotment Option, (a) the purchase price to be paid for the Option Shares is equal to the product of the Share Purchase Price multiplied by the number of Option Shares to be purchased and (b) the purchase price to be paid for the Option Warrants is equal to the product of the Warrant Purchase Price multiplied by the number of Option Warrants (the aggregate purchase price to be paid on an Option Closing Date, the "Option Closing Purchase Price").

(c) The Over-Allotment Option granted pursuant to this Section 2.2 may be exercised by the Representative as to all (at any time) or any part (from time to time) of the Option Securities within forty-five (45) days after the Execution Date. An Underwriter will not be under any obligation to purchase any Option Securities prior to the exercise of the Over-Allotment Option by the Representative. The Over-Allotment Option granted hereby may be exercised by the giving of written notice to the Company from the Representative, by overnight mail or facsimile or other electronic transmission setting forth the number of Option Shares and/or Option Warrants to be purchased and the date and time for delivery of and payment for the Option Securities (each, an "Option Closing Date"), which will not be later than two (2) full Business Days after the date of the notice or such other time as shall be agreed upon by the Company and the Representative, at the offices of EGS or at such other place (including remotely by facsimile or other electronic transmission) as shall be agreed upon by the Company and the Representative. If such delivery and payment for the Option Securities does not occur on the Closing Date, each Option Closing Date will be as set forth in the notice. Upon exercise of the Over-Allotment Option, the Company will become obligated to convey to the Underwriters, and, subject to the terms and conditions set forth herein, the Underwriters will become obligated to purchase, the number of Option Shares and/or Option Warrants specified in such notice. The Representative may cancel the Over-Allotment Option at any time prior to the expiration of the Over-Allotment Option by written notice to the Company.

2.3 Deliveries. The Company shall deliver or cause to be delivered to each Underwriter (if applicable) the following:

(i) At the Closing Date, the Closing Shares and, as to each Option Closing Date, if any, the applicable Option Shares, which shares shall be delivered via The Depository Trust Company Deposit or Withdrawal at Custodian system for the accounts of the several Underwriters;

(ii) At the Closing Date, the Closing Preferred Shares, which shares shall be delivered via The Depository Trust Company Deposit or Withdrawal at Custodian system for the accounts of the several Underwriters;

(iii) At the Closing Date, the Closing Warrants and, as to each Option Closing Date, if any, the applicable Option Warrants via The Depository Trust Company Deposit or Withdrawal at Custodian system for the accounts of the several Underwriters;

(iv) At the Closing Date, and each Option Closing Date, if any, to the Representative only, a Warrant to purchase up to a number of shares of Common Stock equal to 5.0% of the Closing Shares issued on the Closing Date plus the number of Conversion Shares issuable upon conversion of the Closing Preferred Shares, for the account of the Representative (or its designees) and the number of Option Shares issued on each Option Closing Date, if any, which Warrant shall have an exercise price of $____, subject to adjustment therein, and registered in the name of the Representative, otherwise on the same terms as the Closing Warrants;

(v) At the Closing Date, the Warrant Agency Agreement duly executed by the parties thereto;

(vi) At the Closing Date, the Preferred Stock Agency Agreement duly executed by the parties thereto;

(vii) At the Closing Date, evidence of the filing and acceptance of the Certificate of Designation from the Secretary of State of the State of Delaware;

(viii) At the Closing Date, a legal opinion of Company Counsel addressed to the Underwriters, including, without limitation, a negative assurance letter, substantially in the form of Exhibit A attached hereto and as to each Option Closing Date, if any, a bring-down opinion from Company Counsel in form and substance reasonably satisfactory to the Representative;

(ix) Contemporaneously herewith, a cold comfort letter, addressed to the Underwriters and in form and substance satisfactory in all respects to the Representative from the Company Auditor dated, respectively, as of the date of this Agreement and a bring-down letter dated as of the Closing Date and each Option Closing Date, if any;

(x) On the Closing Date and on each Option Closing Date, the duly executed and delivered Officer's Certificate, substantially in the form required by Exhibit B attached hereto;

(xi) On the Closing Date and on each Option Closing Date, the duly executed and delivered Secretary's Certificate, substantially in the form required by Exhibit C attached hereto; and

(xii) Contemporaneously herewith, the duly executed and delivered Lock-Up Agreements.

2.4 Closing Conditions. The respective obligations of each Underwriter hereunder in connection with the Closing and each Option Closing Date are subject to the following conditions being met:

(i) the accuracy in all material respects when made and on the date in question (other than representations and warranties of the Company already qualified by materiality, which shall be true and correct in all respects) of the representations and warranties of the Company contained herein (unless as of a specific date therein);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the date in question shall have been performed;

(iii) the delivery by the Company of the items set forth in Section 2.3 of this Agreement;

(iv) the Registration Statement shall be effective on the date of this Agreement and at each of the Closing Date and each Option Closing Date, if any, no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or shall be pending or contemplated by the Commission and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of the Representative;

(v) by the Execution Date, if required by FINRA, the Underwriters shall have received clearance from FINRA as to the amount of compensation allowable or payable to the Underwriters as described in the Registration Statement;

(vi) the Closing Shares, the Option Shares and the Underlying Shares have been approved for listing on the Trading Market; and

(vii) prior to and on each of the Closing Date and each Option Closing Date, if any: (i) there shall have been no material adverse change or development involving a prospective material adverse change in the condition or prospects or the business activities, financial or otherwise, of the Company from the latest dates as of which such condition is set forth in the Registration Statement and Prospectus; (ii) no action suit or proceeding, at law or in equity, shall have been pending or threatened against the Company or any Affiliate of the Company before or by any court or federal or state commission, board or other administrative agency wherein an unfavorable decision, ruling or finding may materially adversely affect the business, operations, prospects or financial condition or income of the Company, except as set forth in the Registration Statement and Prospectus; (iii) no stop order shall have been issued under the Securities Act and no proceedings therefor shall have been initiated or threatened by the Commission; and (iv) the Registration Statement and the Prospectus and any amendments or supplements thereto shall contain all material statements which are required to be stated therein in accordance with the Securities Act and the rules and regulations thereunder and shall conform in all material respects to the requirements of the Securities Act and the rules and regulations thereunder, and neither the Registration Statement nor the Prospectus nor any amendment or supplement thereto shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company represents and warrants to the Underwriters as of the Execution Date, as of the Closing Date and as of each Option Closing Date, if any, as follows:

(a) Subsidiaries. All of the direct and indirect Subsidiaries of the Company are set forth in the SEC Reports. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no Subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in a Material Adverse Effect and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement. The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents to which the Company is a party and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which the Company is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filing with the Commission of the Prospectus, (ii) the filing of the Certificate of Designation with the Secretary of State of the State of Delaware, and (iii) such filings as are required to be made under applicable state securities laws (collectively, the "Required Approvals").

(f) Registration Statement. The Company has filed with the Commission the Registration Statement, including any related Prospectus or Prospectuses, for the registration of the Securities under the Securities Act, which Registration Statement has been prepared by the Company in all material respects in conformity with the requirements of the Securities Act and the rules and regulations of the Commission under the Securities Act. The Registration Statement has been declared effective by the Commission on the date hereof (the "Effective Date"). The Company has filed with the Commission a Form 8-A (File Number 001-_____) providing for the registration under the Exchange Act of Closing Shares and the Option Shares. The registration of the Closing Shares and the Option Shares under the Exchange Act has been declared effective by the Commission on the date hereof. Any reference in this Agreement to the Registration Statement or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein, if any, which were filed under the Exchange Act, on or before the date of this Agreement, or the issue date of the Prospectus, as the case may be; and any reference in this Agreement to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the date of this Agreement, or the issue date of the Prospectus, deemed to be incorporated therein by reference. All references in this Agreement to financial statements and schedules and other information which is "contained," "included," "described," "referenced," "set forth" or "stated" in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information, if any, that is or is deemed to be incorporated by reference in the Registration Statement, or the Prospectus, as the case may be. No stop order suspending the effectiveness of the Registration Statement or the use of the Prospectus has been issued, and no proceeding for any such purpose is pending or has been initiated or, to the Company's knowledge, is threatened by the Commission. For purposes of this Agreement, "free writing prospectus" has the meaning set forth in Rule 405 under the Securities Act. The Company will not, without the prior consent of the Representative, prepare, use or refer to, any free writing prospectus.

(g) Issuance of Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company. The Company has reserved from its duly authorized capital stock the maximum number of shares of Common Stock issuable pursuant to this Agreement and the Transaction Documents. The holder of the Securities will not be subject to personal liability by reason of being such holders. The Securities are not and will not be subject to the preemptive rights of any holders of any security of the Company or similar contractual rights granted by the Company. All corporate action required to be taken for the authorization, issuance and sale of the Securities has been duly and validly taken. The Securities conform in all material respects to all statements with respect thereto contained in the Registration Statement.

(h) Capitalization. The capitalization of the Company is as set forth in the SEC Reports. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Securities, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or the capital stock of any Subsidiary. The issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Underwriters). There are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. The authorized shares of the Company conform in all material respects to all statements relating thereto contained in the Registration Statement and the Prospectus. The offers and sales of the Company's securities were at all relevant times either registered under the Securities Act and the applicable state securities or Blue Sky laws or, based in part on the representations and warranties of the purchasers, exempt from such registration requirements. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(i) SEC Reports; Financial Statements. The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, together with the Prospectus and the Prospectus Supplement, being collectively referred to herein as the "SEC Reports") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. As of their respective dates, the SEC Reports complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, 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 the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments. The agreements and documents described in the Registration Statement, the Prospectus, the Prospectus Supplement and the SEC Reports conform to the descriptions thereof contained therein and there are no agreements or other documents required by the Securities Act and the rules and regulations thereunder to be described in the Registration Statement, the Prospectus, the Prospectus Supplement or the SEC Reports or to be filed with the Commission as exhibits to the Registration Statement, that have not been so described or filed. Each agreement or other instrument (however characterized or described) to which the Company is a party or by which it is or may be bound or affected and (i) that is referred to in the Registration Statement, the Prospectus, the Prospectus Supplement or the SEC Reports, or (ii) is material to the Company's business, has been duly authorized and validly executed by the Company, is in full force and effect in all material respects and is enforceable against the Company and, to the Company's knowledge, the other parties thereto, in accordance with its terms, except (x) as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, (y) as enforceability of any indemnification or contribution provision may be limited under the federal and state securities laws, and (z) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to the equitable defenses and to the discretion of the court before which any proceeding therefore may be brought. None of such agreements or instruments has been assigned by the Company, and neither the Company nor, to the best of the Company's knowledge, any other party is in default thereunder and, to the best of the Company's knowledge, no event has occurred that, with the lapse of time or the giving of notice, or both, would constitute a default thereunder. To the best of the Company's knowledge, performance by the Company of the material provisions of such agreements or instruments will not result in a violation of any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over the Company or any of its assets or businesses, including, without limitation, those relating to environmental laws and regulations.

(j) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements included within the SEC Reports, except as specifically disclosed in a subsequent SEC Report filed prior to the date hereof, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock, (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans and (vi) no officer or director of the Company has resigned from any position with the Company. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement, no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made. Unless otherwise disclosed in an SEC Report filed prior to the date hereof, the Company has not: (i) issued any securities or incurred any liability or obligation, direct or contingent, for borrowed money; or (ii) declared or paid any dividend or made any other distribution on or in respect to its capital stock.

(k) Litigation. There is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action") which (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(l) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, 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. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(m) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(n) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the SEC Reports, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect (each, a "Material Permit"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit. The disclosures in the Registration Statement concerning the effects of Federal, State, local and all foreign regulation on the Company's business as currently contemplated are correct in all material respects.

(o) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to, or have valid and marketable rights to lease or otherwise use, all real property and all personal property that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP, and the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(p) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses as described in the SEC Reports and which the failure to do so could have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements included within the SEC Reports, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage. Neither the Company nor any 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 without a significant increase in cost.

(r) Transactions With Affiliates and Employees. Except as set forth in the SEC Reports, none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, providing for the borrowing of money from or lending of money to or otherwise requiring payments to or from, any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of $120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(s) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of the Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) of the Company and its Subsidiaries that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(t) Certain Fees. Except as set forth in the Prospectus Supplement, no brokerage or finder's fees or commissions are or will be payable by the Company, any Subsidiary or Affiliate of the Company to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. To the Company's knowledge, there are no other arrangements, agreements or understandings of the Company or, to the Company's knowledge, any of its stockholders that may affect the Underwriters' compensation, as determined by FINRA. The Company has not made any direct or indirect payments (in cash, securities or otherwise) to: (i) any person, as a finder's fee, consulting fee or otherwise, in consideration of such person raising capital for the Company or introducing to the Company persons who raised or provided capital to the Company; (ii) any FINRA member; or (iii) any person or entity that has any direct or indirect affiliation or association with any FINRA member, within the twelve months prior to the Execution Date. None of the net proceeds of the Offering will be paid by the Company to any participating FINRA member or its affiliates, except as specifically authorized herein.

(u) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(v) Registration Rights. No Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiary.

(w) Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Company has not, in the 12 months preceding the date hereof, received notice from any Trading Market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such Trading Market. The Company is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The Common Stock is currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and the Company is current in payment of the fees of the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

(x) Application of Takeover Protections. The Company and the 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 similar charter documents) or the laws of its state of incorporation that is or could become applicable as a result of the Underwriters and the Company fulfilling their obligations or exercising their rights under the Transaction Documents.

(y) Disclosure; 10b-5. The Registration Statement (and any further documents to be filed with the Commission) contains all exhibits and schedules as required by the Securities Act. Each of the Registration Statement and any post-effective amendment thereto, if any, at the time it became effective, complied in all material respects with the Securities Act and the Exchange Act and the applicable rules and regulations under the Securities Act and did not and, as amended or supplemented, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Preliminary Prospectus, Prospectus and the Prospectus Supplement, each as of its respective date, comply in all material respects with the Securities Act and the Exchange Act and the applicable rules and regulations. Each of the Preliminary Prospectus, Prospectus and the Prospectus Supplement, as amended or supplemented, did not and will not contain as of the date thereof any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The SEC Reports, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the applicable rules and regulations, and none of such documents, when they were filed with the Commission, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein (with respect to the SEC Reports incorporated by reference in the Preliminary Prospectus, Prospectus or Prospectus Supplement), in light of the circumstances under which they were made not misleading; and any further documents so filed and incorporated by reference in the Preliminary Prospectus, Prospectus or Prospectus Supplement, when such documents are filed with the Commission, will conform in all material respects to the requirements of the Exchange Act and the applicable rules and regulations, as applicable, and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made not misleading. No post-effective amendment to the Registration Statement reflecting any facts or events arising after the date thereof which represent, individually or in the aggregate, a fundamental change in the information set forth therein is required to be filed with the Commission. There are no documents required to be filed with the Commission in connection with the transaction contemplated hereby that (x) have not been filed as required pursuant to the Securities Act or (y) will not be filed within the requisite time period. There are no contracts or other documents required to be described in the Preliminary Prospectus, Prospectus or Prospectus Supplement, or to be filed as exhibits or schedules to the Registration Statement, which have not been described or filed as required. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit 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 and when made, not misleading.

(z) No Integrated Offering. Neither the Company, nor any of its Affiliates, nor any Person acting on its or 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 cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(aa) Solvency. Based on the consolidated financial condition of the Company as of the Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder, (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the Closing Date. The SEC Reports sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(bb) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (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 and (iii) has set aside on its books provision reasonably adequate for the payment of all material 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 or of any Subsidiary know of no basis for any such claim. The provisions for taxes payable, if any, shown on the financial statements filed with or as part of the Registration Statement are sufficient for all accrued and unpaid taxes, whether or not disputed, and for all periods to and including the dates of such consolidated financial statements. The term "taxes" mean all federal, state, local, foreign, and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments, or charges of any kind whatsoever, together with any interest and any penalties, additions to tax, or additional amounts with respect thereto. The term "returns" means all returns, declarations, reports, statements, and other documents required to be filed in respect to taxes.

(cc) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law, or (iv) violated in any material respect any provision of FCPA. The Company has taken reasonable steps to ensure that its accounting controls and procedures are sufficient to cause the Company to comply in all material respects with the FCPA.

(dd) Accountants. To the knowledge and belief of the Company, the Company Auditor (i) is an independent registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the financial statements to be included in the Company's Annual Report for the fiscal year ending December 31, 2021. The Company Auditor has not, during the periods covered by the financial statements included in the Prospectus, provided to the Company any non-audit services, as such term is used in Section 10A(g) of the Exchange Act.

(ee) FDA. As to each product subject to the jurisdiction of the U.S. Food and Drug Administration ("FDA") under the Federal Food, Drug and Cosmetic Act, as amended, and the regulations thereunder ("FDCA") that is manufactured, packaged, labeled, tested, distributed, sold, and/or marketed by the Company or any of its Subsidiaries (each such product, a "Pharmaceutical Product"), such Pharmaceutical Product is being manufactured, packaged, labeled, tested, distributed, sold and/or marketed by the Company in compliance with all applicable requirements under FDCA and similar laws, rules and regulations relating to registration, investigational use, premarket clearance, licensure, or application approval, good manufacturing practices, good laboratory practices, good clinical practices, product listing, quotas, labeling, advertising, record keeping and filing of reports, except where the failure to be in compliance would not have a Material Adverse Effect. There is no pending, completed or, to the Company's knowledge, threatened, action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against the Company or any of its Subsidiaries, and none of the Company or any of its Subsidiaries has received any notice, warning letter or other communication from the FDA or any other governmental entity, which (i) contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any Pharmaceutical Product, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any Pharmaceutical Product, (iii) imposes a clinical hold on any clinical investigation by the Company or any of its Subsidiaries, (iv) enjoins production at any facility of the Company or any of its Subsidiaries, (v) enters or proposes to enter into a consent decree of permanent injunction with the Company or any of its Subsidiaries, or (vi) otherwise alleges any violation of any laws, rules or regulations by the Company or any of its Subsidiaries, and which, either individually or in the aggregate, would have a Material Adverse Effect. The properties, business and operations of the Company have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA. The Company has not been informed by the FDA that the FDA will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed by the Company nor has the FDA expressed any concern as to approving or clearing for marketing any product being developed or proposed to be developed by the Company.

(ff) Stock Option Plans. Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(gg) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate 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.

(hh) U.S. Real Property Holding Corporation. The Company is not and has never 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 the Representative's request.

(ii) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent (25%) or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(jj) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(kk) D&O Questionnaires. To the Company's knowledge, all information contained in the questionnaires completed by each of the Company's directors and officers immediately prior to the Offering and in the Lock-Up Agreement provided to the Underwriters is true and correct in all respects and the Company has not become aware of any information which would cause the information disclosed in such questionnaires become inaccurate and incorrect.

(ll) FINRA Affiliation. No officer, director or any beneficial owner of 5% or more of the Company's unregistered securities has any direct or indirect affiliation or association with any FINRA member (as determined in accordance with the rules and regulations of FINRA) that is participating in the Offering. The Company will advise the Representative and EGS if it learns that any officer, director or owner of 5% or more of the Company's outstanding shares of Common Stock or Common Stock Equivalents is or becomes an affiliate or associated person of a FINRA member firm.

(mm) Officers' Certificate. Any certificate signed by any duly authorized officer of the Company and delivered to the Representative or EGS shall be deemed a representation and warranty by the Company to the Underwriters as to the matters covered thereby.

(nn) Board of Directors. The Board of Directors is comprised of the persons set forth under the heading of the Prospectus captioned "Management." The qualifications of the persons serving as board members and the overall composition of the Board of Directors comply with the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder applicable to the Company and the rules of the Trading Market. At least one member of the Board of Directors qualifies as a "financial expert" as such term is defined under the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder and the rules of the Trading Market. In addition, at least a majority of the persons serving on the Board of Directors qualify as "independent" as defined under the rules of the Trading Market.

(oo) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Amendments to Registration Statement. The Company has delivered, or will as promptly as practicable deliver, to the Underwriters complete conformed copies of the Registration Statement and of each consent and certificate of experts, as applicable, filed as a part thereof, and conformed copies of the Registration Statement (without exhibits), the Prospectus and the Prospectus Supplement, as amended or supplemented, in such quantities and at such places as an Underwriter reasonably requests. Neither the Company nor any of its directors and officers has distributed and none of them will distribute, prior to the Closing Date, any offering material in connection with the offering and sale of the Securities other than the Prospectus, the Prospectus Supplement, the Registration Statement, and copies of the documents incorporated by reference therein. The Company shall not file any such amendment or supplement to which the Representative shall reasonably object in writing.

4.2 Federal Securities Laws.

(a) Compliance. During the time when a Prospectus is required to be delivered under the Securities Act, the Company will use its best efforts to comply with all requirements imposed upon it by the Securities Act and the rules and regulations thereunder and the Exchange Act and the rules and regulations thereunder, as from time to time in force, so far as necessary to permit the continuance of sales of or dealings in the Securities in accordance with the provisions hereof and the Prospectus. If at any time when a Prospectus relating to the Securities is required to be delivered under the Securities Act, any event shall have occurred as a result of which, in the opinion of counsel for the Company or counsel for the Underwriters, the Prospectus, as then amended or supplemented, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend the Prospectus to comply with the Securities Act, the Company will notify the Underwriters promptly and prepare and file with the Commission, subject to Section 4.1 hereof, an appropriate amendment or supplement in accordance with Section 10 of the Securities Act.

(b) Filing of Final Prospectus. The Company will file the Prospectus (in form and substance satisfactory to the Representative) with the Commission pursuant to the requirements of Rule 424.

(c) Exchange Act Registration. For a period of three years from the Execution Date, the Company will use its best efforts to maintain the registration of the Common Stock under the Exchange Act. The Company will not deregister the Common Stock under the Exchange Act without the prior written consent of the Representative.

(d) Free Writing Prospectuses. The Company represents and agrees that it has not made and will not make any offer relating to the Securities that would constitute an issuer free writing prospectus, as defined in Rule 433 of the rules and regulations under the Securities Act, without the prior written consent of the Representative. Any such free writing prospectus consented to by the Representative is herein referred to as a **"**Permitted Free Writing Prospectus." The Company represents that it will treat each Permitted Free Writing Prospectus as an "issuer free writing prospectus" as defined in rule and regulations under the Securities Act, and has complied and will comply with the applicable requirements of Rule 433 of the Securities Act, including timely Commission filing where required, legending and record keeping.

4.3 Delivery to the Underwriters of Prospectuses. The Company will deliver to the Underwriters, without charge, from time to time during the period when the Prospectus is required to be delivered under the Securities Act or the Exchange Act such number of copies of each Prospectus as the Underwriters may reasonably request and, as soon as the Registration Statement or any amendment or supplement thereto becomes effective, deliver to you two original executed Registration Statements, including exhibits, and all post-effective amendments thereto and copies of all exhibits filed therewith or incorporated therein by reference and all original executed consents of certified experts.

4.4 Effectiveness and Events Requiring Notice to the Underwriters. The Company will use its best efforts to cause the Registration Statement to remain effective with a current prospectus until the later of nine (9) months from the Execution Date and the date on which the Warrants are no longer outstanding, and will notify the Underwriters and holders of the Warrants immediately and confirm the notice in writing: (i) of the effectiveness of the Registration Statement and any amendment thereto; (ii) of the issuance by the Commission of any stop order or of the initiation, or the threatening, of any proceeding for that purpose; (iii) of the issuance by any state securities commission of any proceedings for the suspension of the qualification of the Securities for offering or sale in any jurisdiction or of the initiation, or the threatening, of any proceeding for that purpose; (iv) of the mailing and delivery to the Commission for filing of any amendment or supplement to the Registration Statement or Prospectus; (v) of the receipt of any comments or request for any additional information from the Commission; and (vi) of the happening of any event during the period described in this Section 4.4 that, in the judgment of the Company, makes any statement of a material fact made in the Registration Statement or the Prospectus untrue or that requires the making of any changes in the Registration Statement or the Prospectus in order to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Commission or any state securities commission shall enter a stop order or suspend such qualification at any time, the Company will make every reasonable effort to obtain promptly the lifting of such order.

4.5 Review of Financial Statements. For a period of three (3) years from the Execution Date, the Company, at its expense, shall cause its regularly engaged independent registered public accountants to review (but not audit) the Company's financial statements for each of the first three fiscal quarters prior to the announcement of quarterly financial information.

4.6 Expenses of the Offering. The Company hereby agrees to pay on each of the Closing Date and each Option Closing Date, if any, to the extent not paid at the Closing Date, all expenses incident to the performance of the obligations of the Company under this Agreement, including, but not limited to: (a) all filing fees and communication expenses relating to the registration of the Securities to be sold in the Offering (including the Option Securities) with the Commission; (b) all FINRA Public Offering Filing System fees associated with the review of the Offering by FINRA; all fees and expenses relating to the listing of such Closing Shares, Option Shares and Underlying Shares on the Trading Market and such other stock exchanges as the Company and the Representative together determine; (c) all fees, expenses and disbursements relating to the registration or qualification of such Securities under the "blue sky" securities laws of such states and other foreign jurisdictions as the Representative may reasonably designate (including, without limitation, all filing and registration fees, and the fees and expenses of Blue Sky counsel, it being agreed that the Company will make a payment of up to $25,000 to such counsel on the Closing Date); (d) the costs of all mailing and printing of the underwriting documents (including, without limitation, the Underwriting Agreement, any Blue Sky Surveys and, if appropriate, any Agreement Among Underwriters, Selected Dealers' Agreement, Underwriters' Questionnaire and Power of Attorney), Registration Statements, Prospectuses and all amendments, supplements and exhibits thereto and as many preliminary and final Prospectuses as the Representative may reasonably deem necessary; (e) the costs and expenses of the Company's public relations firm; (f) the costs of preparing, printing and delivering the Securities; (g) fees and expenses of the Transfer Agent for the Securities (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company); (h) stock transfer and/or stamp taxes, if any, payable upon the transfer of securities from the Company to the Underwriters; (i) the fees and expenses of the Company's accountants; (j) the fees and expenses of the Company's legal counsel and other agents and representatives; (k) the Underwriters' costs of mailing prospectuses to prospective investors; (l) the costs associated with advertising the Offering in the national editions of the Wall Street Journal and New York Times after the Closing Date; (m) up to $125,000 for the Representative's diligence expenses and the fees and expenses of EGS; and (n) up to $12,500 for the Underwriters' actual "road show" expenses for the Offering; the costs associated with bound volumes of the public offering materials as well as commemorative mementos and lucite tombstones, each of which the Company or its designee will provide within a reasonable time after the Closing in such quantities as the Underwriters may reasonably request; and (o) the fees, expenses and disbursements relating to background checks of the Company's officers and directors. The Underwriters may also deduct from the net proceeds of the Offering payable to the Company on the Closing Date, or each Option Closing Date, if any, the expenses set forth herein to be paid by the Company to the Underwriters.

4.7 Application of Net Proceeds. The Company will apply the net proceeds from the Offering received by it in a manner consistent with the application described under the caption "Use of Proceeds" in the Prospectus.

4.8 Delivery of Earnings Statements to Security Holders. The Company will make generally available to its security holders as soon as practicable, but not later than the first day of the fifteenth full calendar month following the Execution Date, an earnings statement (which need not be certified by independent public or independent certified public accountants unless required by the Securities Act or the Rules and Regulations under the Securities Act, but which shall satisfy the provisions of Rule 158(a) under Section 11(a) of the Securities Act) covering a period of at least twelve consecutive months beginning after the Execution Date.

4.9 Stabilization. Neither the Company, nor, to its knowledge, any of its employees, directors or shareholders (without the consent of the Representative) has taken or will take, directly or indirectly, any action designed to or that has constituted or that might reasonably be expected to cause or result in, under the Exchange Act, or otherwise, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

4.10 Internal Controls. The Company will maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary in order to permit preparation of financial statements in accordance with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

4.11 Accountants. The Company shall continue to retain a nationally recognized independent certified public accounting firm for a period of at least three years after the Execution Date. The Underwriters acknowledge that the Company Auditor is acceptable to the Underwriters.

4.12 FINRA. The Company shall advise the Underwriters (who shall make an appropriate filing with FINRA) if it is aware that any 5% or greater shareholder of the Company becomes an affiliate or associated person of an Underwriter.

4.13 No Fiduciary Duties. The Company acknowledges and agrees that the Underwriters' responsibility to the Company is solely contractual and commercial in nature, based on arms-length negotiations and that neither the Underwriters nor their affiliates or any selected dealer shall be deemed to be acting in a fiduciary capacity, or otherwise owes any fiduciary duty to the Company or any of its affiliates in connection with the Offering and the other transactions contemplated by this Agreement. Notwithstanding anything in this Agreement to the contrary, the Company acknowledges that the Underwriters may have financial interests in the success of the Offering that are not limited to the difference between the price to the public and the purchase price paid to the Company by the Underwriters for the shares and the Underwriters have no obligation to disclose, or account to the Company for, any of such additional financial interests. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against the Underwriters with respect to any breach or alleged breach of fiduciary duty.

4.14 Underlying Shares. If all or any portion of a Warrant is exercised at a time when there is an effective registration statement to cover the issuance of the Warrant Shares or if the Warrant is exercised via cashless exercise, the Warrant Shares issued pursuant to any such exercise shall be issued free of all restrictive legends. If at any time following the date hereof the Registration Statement (or any subsequent registration statement registering the sale or resale of the Warrant Shares) is not effective or is not otherwise available for the sale of the Warrant Shares, the Company shall immediately notify the holders of the Warrants in writing that such registration statement is not then effective and thereafter shall promptly notify such holders when the registration statement is effective again and available for the sale of the Warrant Shares (it being understood and agreed that the foregoing shall not limit the ability of the Company to issue, or any holder thereof to sell, any of the Warrant Shares in compliance with applicable federal and state securities laws).

4.15 Board Composition and Board Designations. The Company shall ensure that: (i) the qualifications of the persons serving as board members and the overall composition of the Board of Directors comply with the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder and with the listing requirements of the Trading Market and (ii) if applicable, at least one member of the Board of Directors qualifies as a "financial expert" as such term is defined under the Sarbanes-Oxley Act of 2002 and the rules promulgated thereunder.

4.16 Securities Laws Disclosure; Publicity. At the request of the Representative, by 9:00 a.m. (New York City time) on the date hereof, the Company shall issue a press release disclosing the material terms of the Offering. The Company and the Representative shall consult with each other in issuing any other press releases with respect to the Offering, and neither the Company nor any Underwriter shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of such Underwriter, or without the prior consent of such Underwriter, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. The Company will not issue press releases or engage in any other publicity, without the Representative's prior written consent, for a period ending at 5:00 p.m. (New York City time) on the first business day following the 45th day following the Closing Date, other than normal and customary releases issued in the ordinary course of the Company's business.

4.17 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Underwriter of the Securities is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Underwriter of Securities could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities.

4.18 Reservation of Common Stock. As of the date hereof, the Company has reserved and the Company shall continue to reserve and keep available at all times, free of preemptive rights, a sufficient number of shares of Common Stock for the purpose of enabling the Company to issue Option Shares pursuant to the Over-Allotment Option and Warrant Shares pursuant to any exercise of the Warrants.

4.19 Listing of Common Stock. The Company hereby agrees to use best efforts to maintain the listing or quotation of the Common Stock on the Trading Market on which it is currently listed, and concurrently with the Closing, the Company shall apply to list or quote all of the Closing Shares, Option Shares and Underlying Shares on such Trading Market and promptly secure the listing of all of the Closing Shares, Option Shares and Underlying Shares on such Trading Market. The Company further agrees, if the Company applies to have the Common Stock traded on any other Trading Market, it will then include in such application all of the Closing Shares, Option Shares and Underlying Shares, and will take such other action as is necessary to cause all of the Closing Shares, Option Shares and Underlying Shares to be listed or quoted on such other Trading Market as promptly as possible. The Company will then take all action reasonably necessary to continue the listing and trading of its Common Stock on a Trading Market and will comply in all respects with the Company's reporting, filing and other obligations under the bylaws or rules of the Trading Market. The Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.20 Subsequent Equity Sales.

(a) From the date hereof until one hundred and eighty (180) days following the Closing Date, neither the Company nor any Subsidiary shall issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents.

(b) From the date hereof until the one (1) year anniversary of the Closing Date, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Any Underwriter shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(c) Notwithstanding the foregoing, this Section 4.20 shall not apply in respect of an Exempt Issuance, except that no Variable Rate Transaction shall be an Exempt Issuance.

4.21 Research Independence. The Company acknowledges that each Underwriter's research analysts and research departments, if any, are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such Underwriter's research analysts may hold and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of its investment bankers. The Company hereby waives and releases, to the fullest extent permitted by law, any claims that the Company may have against such Underwriter with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company by such Underwriter's investment banking divisions. The Company acknowledges that the Representative is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short position in debt or equity securities of the Company.

ARTICLE V.
DEFAULT BY UNDERWRITERS

If on the Closing Date or any Option Closing Date, if any, any Underwriter shall fail to purchase and pay for the portion of the Closing Securities or Option Securities, as the case may be, which such Underwriter has agreed to purchase and pay for on such date (otherwise than by reason of any default on the part of the Company), the Representative, or if the Representative is the defaulting Underwriter, the non-defaulting Underwriters, shall use their reasonable efforts to procure within 36 hours thereafter one or more of the other Underwriters, or any others, to purchase from the Company such amounts as may be agreed upon and upon the terms set forth herein, the Closing Securities or Option Securities , as the case may be, which the defaulting Underwriter or Underwriters failed to purchase. If during such 36 hours the Representative shall not have procured such other Underwriters, or any others, to purchase the Closing Securities or Option Securities, as the case may be, agreed to be purchased by the defaulting Underwriter or Underwriters, then (a) if the aggregate number of Closing Securities or Option Securities, as the case may be, with respect to which such default shall occur does not exceed 10% of the Closing Securities or Option Securities, as the case may be, covered hereby, the other Underwriters shall be obligated, severally, in proportion to the respective numbers of Closing Securities or Option Securities, as the case may be, which they are obligated to purchase hereunder, to purchase the Closing Securities or Option Securities, as the case may be, which such defaulting Underwriter or Underwriters failed to purchase, or (b) if the aggregate number of Closing Securities or Option Securities, as the case may be, with respect to which such default shall occur exceeds 10% of the Closing Securities or Option Securities, as the case may be, covered hereby, the Company or the Representative will have the right to terminate this Agreement without liability on the part of the non-defaulting Underwriters or of the Company except to the extent provided in Article VI hereof. In the event of a default by any Underwriter or Underwriters, as set forth in this Article V, the applicable Closing Date may be postponed for such period, not exceeding seven days, as the Representative, or if the Representative is the defaulting Underwriter, the non-defaulting Underwriters, may determine in order that the required changes in the Prospectus or in any other documents or arrangements may be effected. The term “Underwriter” includes any Person substituted for a defaulting Underwriter. Any action taken under this Section shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

ARTICLE VI.
INDEMNIFICATION

6.1 Indemnification of the Underwriters. Subject to the conditions set forth below, the Company agrees to indemnify and hold harmless the Underwriters, and each dealer selected by each Underwriter that participates in the offer and sale of the Securities (each a "Selected Dealer") and each of their respective directors, officers and employees and each Person, if any, who controls such Underwriter or any Selected Dealer ("Controlling Person") within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any and all loss, liability, claim, damage and expense whatsoever (including but not limited to any and all legal or other expenses reasonably incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, whether arising out of any action between such Underwriter and the Company or between such Underwriter and any third party or otherwise) to which they or any of them may become subject under the Securities Act, the Exchange Act or any other statute or at common law or otherwise or under the laws of foreign countries, arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in (i) any Preliminary Prospectus, if any, the Registration Statement or the Prospectus (as from time to time each may be amended and supplemented); (ii) any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of the offering of the Securities, including any "road show" or investor presentations made to investors by the Company (whether in person or electronically); or (iii) any application or other document or written communication (in this Article VI, collectively called "application") executed by the Company or based upon written information furnished by the Company in any jurisdiction in order to qualify the Securities under the securities laws thereof or filed with the Commission, any state securities commission or agency, Trading Market or any securities exchange; or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, unless such statement or omission was made in reliance upon and in conformity with written information furnished to the Company with respect to the applicable Underwriter by or on behalf of such Underwriter expressly for use in any Preliminary Prospectus, if any, the Registration Statement or Prospectus, or any amendment or supplement thereto, or in any application, as the case may be. With respect to any untrue statement or omission or alleged untrue statement or omission made in the Preliminary Prospectus, if any, the indemnity agreement contained in this Section 6.1 shall not inure to the benefit of an Underwriter to the extent that any loss, liability, claim, damage or expense of such Underwriter results from the fact that a copy of the Prospectus was not given or sent to the Person asserting any such loss, liability, claim or damage at or prior to the written confirmation of sale of the Securities to such Person as required by the Securities Act and the rules and regulations thereunder, and if the untrue statement or omission has been corrected in the Prospectus, unless such failure to deliver the Prospectus was a result of non-compliance by the Company with its obligations under this Agreement. The Company agrees promptly to notify each Underwriter of the commencement of any litigation or proceedings against the Company or any of its officers, directors or Controlling Persons in connection with the issue and sale of the Public Securities or in connection with the Registration Statement or Prospectus.

6.2 Procedure. If any action is brought against an Underwriter, a Selected Dealer or a Controlling Person in respect of which indemnity may be sought against the Company pursuant to Section 6.1, such Underwriter, such Selected Dealer or Controlling Person, as the case may be, shall promptly notify the Company in writing of the institution of such action and the Company shall assume the defense of such action, including the employment and fees of counsel (subject to the reasonable approval of such Underwriter or such Selected Dealer, as the case may be) and payment of actual expenses. Such Underwriter, such Selected Dealer or Controlling Person shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Underwriter, such Selected Dealer or Controlling Person unless (i) the employment of such counsel at the expense of the Company shall have been authorized in writing by the Company in connection with the defense of such action, or (ii) the Company shall not have employed counsel to have charge of the defense of such action, or (iii) such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to those available to the Company (in which case the Company shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events the reasonable fees and expenses of not more than one additional firm of attorneys selected by such Underwriter (in addition to local counsel), Selected Dealer and/or Controlling Person shall be borne by the Company. Notwithstanding anything to the contrary contained herein, if any Underwriter, Selected Dealer or Controlling Person shall assume the defense of such action as provided above, the Company shall have the right to approve the terms of any settlement of such action which approval shall not be unreasonably withheld.

6.3 Indemnification of the Company. Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, its directors, officers and employees and agents who control the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the foregoing indemnity from the Company to such Underwriter, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions made in any Preliminary Prospectus, if any, the Registration Statement or Prospectus or any amendment or supplement thereto or in any application, in reliance upon, and in strict conformity with, written information furnished to the Company with respect to such Underwriter by or on behalf of such Underwriter expressly for use in such Preliminary Prospectus, if any, the Registration Statement or Prospectus or any amendment or supplement thereto or in any such application. In case any action shall be brought against the Company or any other Person so indemnified based on any Preliminary Prospectus, if any, the Registration Statement or Prospectus or any amendment or supplement thereto or any application, and in respect of which indemnity may be sought against such Underwriter, such Underwriter shall have the rights and duties given to the Company, and the Company and each other Person so indemnified shall have the rights and duties given to such Underwriter by the provisions of this Article VI. Notwithstanding the provisions of this Section 6.3, no Underwriter shall be required to indemnify the Company for any amount in excess of the underwriting discounts and commissions applicable to the Securities purchased by such Underwriter. The Underwriters' obligations in this Section 6.3 to indemnify the Company are several in proportion to their respective underwriting obligations and not joint.

6.4 Contribution.

(a) Contribution Rights. In order to provide for just and equitable contribution under the Securities Act in any case in which (i) any Person entitled to indemnification under this Article VI makes a claim for indemnification pursuant hereto but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Article VI provides for indemnification in such case, or (ii) contribution under the Securities Act, the Exchange Act or otherwise may be required on the part of any such Person in circumstances for which indemnification is provided under this Article VI, then, and in each such case, the Company and each Underwriter, severally and not jointly, shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by said indemnity agreement incurred by the Company and such Underwriter, as incurred, in such proportions that such Underwriter is responsible for that portion represented by the percentage that the underwriting discount appearing on the cover page of the Prospectus bears to the initial offering price appearing thereon and the Company is responsible for the balance; provided, that, no Person guilty of a fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. For purposes of this Section, each director, officer and employee of such Underwriter or the Company, as applicable, and each Person, if any, who controls such Underwriter or the Company, as applicable, within the meaning of Section 15 of the Securities Act shall have the same rights to contribution as such Underwriter or the Company, as applicable. Notwithstanding the provisions of this Section 6.4, no Underwriter shall be required to contribute any amount in excess of the underwriting discounts and commissions applicable to the Securities purchased by such Underwriter. The Underwriters' obligations in this Section 6.4 to contribute are several in proportion to their respective underwriting obligations and not joint.

(b) Contribution Procedure. Within fifteen days after receipt by any party to this Agreement (or its representative) of notice of the commencement of any action, suit or proceeding, such party will, if a claim for contribution in respect thereof is to be made against another party ("contributing party"), notify the contributing party of the commencement thereof, but the failure to so notify the contributing party will not relieve it from any liability which it may have to any other party other than for contribution hereunder. In case any such action, suit or proceeding is brought against any party, and such party notifies a contributing party or its representative of the commencement thereof within the aforesaid fifteen days, the contributing party will be entitled to participate therein with the notifying party and any other contributing party similarly notified. Any such contributing party shall not be liable to any party seeking contribution on account of any settlement of any claim, action or proceeding affected by such party seeking contribution without the written consent of such contributing party. The contribution provisions contained in this Section 6.4 are intended to supersede, to the extent permitted by law, any right to contribution under the Securities Act, the Exchange Act or otherwise available.

ARTICLE VII.
MISCELLANEOUS

7.1 Termination.

(a) Termination Right. The Representative shall have the right to terminate this Agreement at any time prior to any Closing Date, (i) if any domestic or international event or act or occurrence has materially disrupted, or in its opinion will in the immediate future materially disrupt, general securities markets in the United States; or (ii) if trading on any Trading Market shall have been suspended or materially limited, or minimum or maximum prices for trading shall have been fixed, or maximum ranges for prices for securities shall have been required by FINRA or by order of the Commission or any other government authority having jurisdiction, or (iii) if the United States shall have become involved in a new war or an increase in major hostilities, or (iv) if a banking moratorium has been declared by a New York State or federal authority, or (v) if a moratorium on foreign exchange trading has been declared which materially adversely impacts the United States securities markets, or (vi) if the Company shall have sustained a material loss by fire, flood, accident, hurricane, earthquake, theft, sabotage or other calamity or malicious act which, whether or not such loss shall have been insured, will, in the Representative's opinion, make it inadvisable to proceed with the delivery of the Securities, or (vii) if the Company is in material breach of any of its representations, warranties or covenants hereunder, or (viii) if the Representative shall have become aware after the date hereof of such a material adverse change in the conditions or prospects of the Company, or such adverse material change in general market conditions as in the Representative's judgment would make it impracticable to proceed with the offering, sale and/or delivery of the Securities or to enforce contracts made by the Underwriters for the sale of the Securities.

(b) Expenses. In the event this Agreement shall be terminated pursuant to Section 7.1(a), within the time specified herein or any extensions thereof pursuant to the terms herein, the Company shall be obligated to pay to the Representative its actual and accountable out of pocket expenses related to the transactions contemplated herein then due and payable, including the fees and disbursements of EGS up to $25,000.00 (provided, however, that such expense cap in no way limits or impairs the indemnification and contribution provisions of this Agreement).

(c) Indemnification. Notwithstanding any contrary provision contained in this Agreement, any election hereunder or any termination of this Agreement, and whether or not this Agreement is otherwise carried out, the provisions of Article VI shall not be in any way effected by such election or termination or failure to carry out the terms of this Agreement or any part hereof.

7.2 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, the Prospectus and the Prospectus Supplement, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules. Notwithstanding anything herein to the contrary, the Engagement Agreement, dated April 9, 2021 ("Engagement Agreement"), as amended, by and between the Company and the Representative, shall continue to be effective and the terms therein, including, without limitation, Section 7 and Section 8 with respect to any future offerings, shall continue to survive and be enforceable by the Representative in accordance with its terms, provided that, in the event of a conflict between the terms of the Engagement Agreement and this Agreement, the terms of this Agreement shall prevail.

7.3 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or e-mail attachment at the email address set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or e-mail attachment at the e-mail address as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2^{nd}) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

7.4 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and the Representative. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

7.5 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

7.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

7.7 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City 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 (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such 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 this 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 other manner permitted by law. If either party shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Article VI, the prevailing party in such Action or Proceeding shall be reimbursed by the other party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

7.8 Survival. The representations and warranties contained herein shall survive the Closing and the Option Closing, if any, and the delivery of the Securities.

7.9 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

7.10 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

7.11 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, the Underwriters and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

7.12 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

7.13 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

7.14 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVE FOREVER ANY RIGHT TO TRIAL BY JURY.**

(Signature Pages Follow)

If the foregoing correctly sets forth the understanding between the Underwriters and the Company, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement among the Company and the several Underwriters in accordance with its terms.

Very truly yours,

BLUEJAY DIAGNOSTICS, INC.

By: _____
Name:
Title:

Address for Notice:

Copy to:

Accepted on the date first above written.
DAWSON JAMES SECURITIES, INC.
As the Representative of the several
Underwriters listed on Schedule I
By: Dawson James Securities, Inc.

By: _____
Name:
Title:

Address for Notice:
Dawson James Securities, Inc.
101 North Federal Highway, Suite 600
Boca Raton, FL 33432

Copy to:
Ellenoff Grossman & Schole LLP
1345 Avenue of the Americas
New York, NY 10105
Attn: Robert F. Charron
Email: capmkts@egsllp.com

SCHEDULE I

SCHEDULE OF UNDERWRITERS

Underwriters	Closing Shares	Closing Preferred Shares	Closing Series A Warrants	Closing Series B Warrants	Closing Purchase Price
Dawson James Securities, Inc.					
Total					

Exhibit 3.1

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BLUEJAY DIAGNOSTICS, INC.

October 22, 2021

BlueJay Diagnostics, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), DOES HEREBY CERTIFY AS FOLLOWS:

1. The name of the Corporation is BlueJay Diagnostics, Inc. The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 20, 2015 (the "Original Certificate") under the name BlueJay Diagnostics, Inc.

2. This Amended and Restated Certificate of Incorporation (the "Amended and Restated Certificate"), which both restates and amends the provisions of the Original Certificate, has been approved by the Board of Directors of the Corporation (the "Board of Directors") in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, as amended from time to time (the "DGCL") and has been adopted by the written consent of the stockholders of the Corporation in accordance with Section 228 of the DGCL.

3. This Amended and Restated Certificate shall become effective on the date of filing with the Secretary of State of Delaware.

4. The text of the certificate of incorporation of the Corporation, as heretofore amended, is hereby amended and restated by this Amended and Restated Certificate to read in its entirety as set forth in EXHIBIT A attached hereto.

BlueJay Diagnostics, Inc.

By: /s/ Neil Dey
Name: Neil Dey
Title: CEO

EXHIBIT A

ARTICLE I.
NAME

The name of the corporation is BlueJay Diagnostics, Inc. (the "Corporation").

ARTICLE II.
REGISTERED AGENT

The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, 19808, and 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 General Corporation Law of the State of Delaware, as amended from time to time (the "DGCL"). In addition to the powers and privileges conferred upon the Corporation by law and those incidental thereto, the Corporation shall possess and may exercise all the powers and privileges that are necessary or convenient to the conduct, promotion or attainment of the business or purposes of the Corporation.

ARTICLE IV.
CAPITALIZATION

Section 4.1 Authorized Capital Stock. The total number of shares of all classes of capital stock, each with a par value of $0.0001 per share, which the Corporation is authorized to issue is ONE HUNDRED FIVE MILLION (105,000,000) shares, consisting of (a) ONE HUNDRED MILLION (100,000,000) shares of common stock (the "Common Stock"), and (b) FIVE MILLION (5,000,000) shares of preferred stock (the "Preferred Stock"). FOUR THOUSAND FIVE HUNDRED (4,500) shares of Preferred Stock are designated as Series D Convertible Preferred Stock (the "Series D Preferred Stock").

Section 4.2 The designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation are as follows:

PART A COMMON STOCK.

(i) The voting, dividend, liquidation, and other rights and powers of the Common Stock are subject to and qualified by the rights, powers and preferences of any series of Preferred Stock as may be designated by the Board of Directors of the Corporation (the "Board of Directors") and outstanding from time to time.

(ii) Except as otherwise provided herein or expressly required by law, each holder of Common Stock, as such, shall be entitled to vote on each matter submitted to a vote of stockholders and shall be entitled to one (1) vote for each share of Common Stock held of record by such holder as of the record date for determining stockholders entitled to vote on such matter. Except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate (including any Certificate of Designation (as defined below)) that relates solely to the rights, powers, preferences (or the qualifications, limitations or restrictions thereof) or other terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate (including any Certificate of Designation) or pursuant to the DGCL.

(iii) Subject to the rights of any holders of any outstanding series of Preferred Stock, the number of authorized shares of Common 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 stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

(iv) Subject to applicable law and the rights and preferences of any holders of any outstanding series of Preferred Stock, the holders of Common Stock, as such, shall be entitled to the payment of dividends on the Common Stock when, as and if declared by the Board of Directors in accordance with applicable law.

(v) Subject to the rights and preferences of any holders of any shares of any outstanding series of Preferred Stock, in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the funds and assets of the Corporation that may be legally distributed to the Corporation's stockholders shall be distributed among the holders of the then outstanding Common Stock pro rata in accordance with the number of shares of Common Stock held by each such holder.

PART B PREFERRED STOCK.

(i) Shares of Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the creation and issuance of such series adopted by the Board of Directors as hereinafter provided.

(ii) Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designation relating thereto in accordance with the DGCL (a "Certificate of Designation"), to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, and to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series as shall be stated and expressed in such resolutions (which shares so subtracted shall become authorized, unissued, and undesignated shares of the Preferred Stock), all to the fullest extent now or hereafter permitted by the DGCL. Without limiting the generality of the foregoing, the resolution or resolutions providing for the creation and issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law and this Amended and Restated Certificate (including any Certificate of Designation). Except as otherwise required by law, holders of any series of Preferred Stock shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Amended and Restated Certificate (including any Certificate of Designation).

(iii) 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 stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

PART C. SERIES D CONVERTIBLE PREFERRED STOCK

FOUR THOUSAND FIVE HUNDRED (4,500) shares of authorized Series D Preferred Stock have the following powers, privileges, rights, qualifications, limitations and restrictions. Unless otherwise indicated, references to "Sections" or "Subsections" in this Part C of Article IV (this "Article IV Part C") refer to sections and subsections of this Article IV Part C.

Section 1. Definitions. For the purposes this Article IV Part C, the following terms shall have the following meanings:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"Alternate Consideration" shall have the meaning set forth in Section 7(e).

"Beneficial Ownership Limitation" shall have the meaning set forth in Section 6(d).

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Buy-In" shall have the meaning set forth in Section 6(c)(iv).

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the Corporation's common stock, par value $0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Conversion Amount" means the sum of the Stated Value at issue.

"Conversion Date" shall have the meaning set forth in Section 6(a).

"Conversion Price" shall have the meaning set forth in Section 6(b).

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

"Debentures" means the 7.5% Senior Secured Convertible Debentures due, subject to the terms therein, May 31, 2022, issued by the Company to the Holders and which are convertible into shares of Preferred Stock.

"Effective Date" means the date that the Conversion Shares Registration Statement filed by the Corporation pursuant to the Registration Rights Agreement is first declared effective by the Commission.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Fundamental Transaction" shall have the meaning set forth in Section 7(e).

"GAAP" means United States generally accepted accounting principles.

"Holder" shall have the meaning given such term in Section 2.

"IPO" means the initial public offering of the Company.

"IPO Date" means the date that the registration statement registering the shares to be issued in the IPO is declared effective by the Commission.

"Liquidation" shall have the meaning set forth in Section 5.

"New York Courts" shall have the meaning set forth in Section 11(d).

"Notice of Conversion" shall have the meaning set forth in Section 6(a).

"Original Issue Date" means the date of the first issuance of any shares of the Preferred Stock pursuant to a conversion of the Debenture regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Preferred Stock" shall have the meaning set forth in Section 2.

"Purchase Agreement" means the Securities Purchase Agreement, dated on or about June 7, 2021, among the Corporation and the original Holders, as amended, modified or supplemented from time to time in accordance with its terms.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date of the Purchase Agreement, among the Corporation and the original Holders, in the form of Exhibit B attached to the Purchase Agreement.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Underlying Shares by each Holder as provided for in the Registration Rights Agreement.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"Registration Statement" means a registration statement that registers the resale of all Conversion Shares of the Holders, who shall be named as "selling stockholders" therein and meets the requirements of the Registration Rights Agreement.

"Securities" means the Preferred Stock, the Debentures and the Underlying Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Share Delivery Date" shall have the meaning set forth in Section 6(c).

"Stated Value" shall have the meaning set forth in Section 2, as the same may be increased pursuant to Section 3.

"Subsidiary" means any subsidiary of the Corporation and shall, where applicable, also include any direct or indirect subsidiary of the Corporation formed or acquired after the date of the Purchase Agreement.

"Successor Entity" shall have the meaning set forth in Section 7(e).

"Trading Day" means a day on which the principal Trading Market is open for business.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange (or any successors to any of the foregoing).

"Transaction Documents" means this Article IV Part C, the Purchase Agreement, the Debentures, the Registration Rights Agreement, the Lock-Up Agreement, all exhibits and schedules thereto and any other documents or agreements executed in connection with the transactions contemplated pursuant to the Purchase Agreement.

"Transfer Agent" means Continental Stock Transfer & Trust Company, the current transfer agent of the Corporation, and any successor transfer agent of the Corporation.

"Underlying Shares" means the shares of Common Stock issued and issuable upon conversion of the Preferred Stock.

"VWAP" means, for any date following the IPO Date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the "Pink Sheets" published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series D Convertible Preferred Stock (the "Preferred Stock") and the number of shares so designated shall be up to 4,500 (which shall not be subject to increase without the written consent of all of the holders of the Preferred Stock (each, a "Holder" and collectively, the "Holders")). Each share of Preferred Stock shall have a par value of $0.0001 per share and a stated value equal to $1,000, subject to increase set forth in Section 3 below (the "Stated Value").

Section 3. Dividends.

a) Dividends in Cash. Holders shall be entitled to receive, and the Corporation shall pay, cumulative dividends at the rate per share (as a percentage of the Stated Value per share) of 7.5% per annum increasing to 15% per annum after November 23, 2021, payable quarterly on January 1, April 1, July 1 and October 1, beginning on the first such date after the Original Issue Date and on each Conversion Date (with respect only to Preferred Stock being converted) (each such date, a "Dividend Payment Date") (if any Dividend Payment Date is not a Trading Day, the applicable payment shall be due on the next succeeding Trading Day) in cash; provided, however, following the IPO Date no dividend shall accrue on the Preferred Stock thereafter.

b) Dividend Calculations. Dividends on the Preferred Stock shall be calculated on the basis of a 360-day year, consisting of twelve 30 calendar day periods, and shall accrue daily commencing on the Original Issue Date, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends.

c) Late Fees. Any dividends, whether paid in cash or shares of Common Stock, that are not paid within three Trading Days following a Dividend Payment Date shall continue to accrue and shall entail a late fee, which must be paid in cash, at the rate of 15% per annum or the lesser rate permitted by applicable law which shall accrue daily from the Dividend Payment Date through and including the date of actual payment in full.

Section 4. Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Stock shall have no voting rights. However, as long as any shares of Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the Holders of a majority of the then outstanding shares of the Preferred Stock, (a) alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Article IV Part C, (b) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the Holders, (c) increase the number of authorized shares of Preferred Stock, or (d) enter into any agreement with respect to any of the foregoing.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a "Liquidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount equal to the Stated Value, plus any accrued and unpaid dividends thereon, for each share of Preferred Stock before any distribution or payment shall be made to the holders of the Common Stock, and if the assets of the Corporation shall be insufficient to pay in full such amounts, then the entire assets to be distributed to the Holders shall be ratably distributed among the Holders in accordance with the respective amounts that would be payable on such shares if all amounts payable thereon were paid in full. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

Section 6. Conversion.

a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after (or simultaneously with) the delivery of a Notice of Conversion pursuant to the Debenture at the option of the Holder thereof, into that number of shares of Common Stock (subject to the limitations set forth in Section 6(d)) determined by dividing the Stated Value of such share of Preferred Stock by the Conversion Price. Holders shall effect conversions by providing the Corporation with a conversion notice, which may also be effected through the Notice of Conversion delivered in connection with the conversion of the principal amount of the Debenture pursuant to which the Preferred Stock is issued (a "Notice of Conversion"). Each Notice of Conversion shall be signed by the Holder initiating the conversion and shall specify:

i. the number of shares of Preferred Stock to be converted;

ii. the number of shares of Preferred Stock owned prior to the conversion at issue;

iii. the Stated Value of shares of Preferred Stock to be converted;

iv. the number of shares of Common Stock to be issued;

v. the applicable Conversion Price;

vi. the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the "Conversion Date");

vii. the address for delivery; and

viii. DWAC Instructions (including broker number and account number)

If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No inkoriginal Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

b) Conversion Price. The conversion price for the Preferred Stock shall equal **$1.00**, subject to adjustment herein (the "Conversion Price"); provided, however, if the pre-IPO capitalization of the Company is such that the aggregate amount of Conversion Shares issuable in full hereunder (ignoring for such purposes any conversion limitations set forth hereunder and assuming the issuance of 4,500 shares of Preferred Stock) is less than 27.4% of the fully diluted issued and outstanding shares of Common Stock of the Company the Conversion Price shall be reduced, and only reduced, such that the Conversion Price would result in the issuance of a number of shares of Common Stock of the Company that equals 27.4% of the issued and outstanding shares of Common Stock of the Company pre-IPO (ignoring for such purposes any conversion limitations set forth hereunder); provided, further, if the pre-money valuation of the Company entering into the IPO is less than $80,000,000 and a Holder's (aggregated with any Affiliates of the Holder) participation in the IPO is at least $10 million, the Conversion Price as to such Holder and its Affiliates shall be reduced, and only reduced, such that the blended price per shares of such Holder's participated, when taking into account the IPO public offering price and the Conversion Price hereunder, shall equal 40% of the public offering price of the IPO. By way of example, assuming no adjustment as a result of the first proviso, if the public offering price of the IPO is $4 per share and the Holder (and any Affiliates) participated in the IPO for $10 million, then the Conversion Price hereunder shall be reduced to equal $0.69 such that the average cost basis of the Holder's purchase of Conversion Shares and shares purchased in the IPO is $1.60.

c) Mechanics of Conversion

i. Delivery of Conversion Shares Upon Conversion. Not later than the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) after each Conversion Date (the "Share Delivery Date"), the Corporation shall deliver, or cause to be delivered, to the converting Holder (A) Conversion Shares which, on or after the earlier of (i) the six month anniversary of the issuance of the Debentures or (ii) the Effective Date, shall be free of restrictive legends and trading restrictions (other than those which may then be required by the Purchase Agreement) representing the number of Conversion Shares being acquired upon the conversion of the Preferred Stock, and (B) a bank check in the amount of accrued and unpaid dividends, if any. On or after the earlier of (i) the six-month anniversary of the issuance of the Debentures or (ii) the Effective Date, the Corporation shall use its best efforts to deliver the Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

ii. Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

iii. Obligation Absolute; Partial Liquidated Damages. The Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of the Stated Value of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law, agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(c)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each $5,000 of Stated Value of Preferred Stock being converted, $50 per Trading Day (increasing to $100 per Trading Day on the third Trading Day and increasing to $200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder's right to pursue actual damages for the Corporation's failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

iv. Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(c)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of $10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder $1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver Conversion Shares upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

v. Reservation of Shares Issuable Upon Conversion. The Corporation covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall (subject to the terms and conditions set forth in the Purchase Agreement) be issuable (taking into account the adjustments and restrictions of Section 7) upon the conversion of the then outstanding shares of Preferred Stock The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable and, if the Registration Statement is then effective under the Securities Act, shall be registered for public resale in accordance with such Registration Statement (subject to such Holder's compliance with its obligations under the Registration Rights Agreement).

vi. Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share. Notwithstanding anything to the contrary contained herein, but consistent with the provisions of this subsection with respect to fractional Conversion Shares, nothing shall prevent any Holder from converting fractional shares of Preferred Stock.

vii. Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

d) Beneficial Ownership Limitation. The Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, to the extent that, after giving effect to the conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Stated Value of Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. To the extent that the limitation contained in this Section 6(d) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder's determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Corporation's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Corporation or (iii) a more recent written notice by the Corporation or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Corporation shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Corporation, including the Preferred Stock, by such Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% (or, upon election by a Holder prior to the issuance of any shares of Preferred Stock, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(d) applicable to its Preferred Stock provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by the Holder and the provisions of this Section 6(d) shall continue to apply. Any such increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

Section 7. Certain Adjustments.

a) Stock Dividends and Stock Splits. If the Corporation, at any time while this Preferred Stock is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Corporation upon conversion of, or payment of a dividend on, this Preferred Stock), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Corporation, then the Conversion Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding any treasury shares of the Corporation) outstanding immediately before such event, and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) [RESERVED]

c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder of will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

e) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Preferred Stock, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 6(d)) on the conversion of this Preferred Stock), the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitation in Section 6(d) on the conversion of this Preferred Stock). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Corporation under this Article IV Part C and the other Transaction Documents (as defined in the Purchase Agreement) in accordance with the provisions of this Section 7(e) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on the conversion of this Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Article IV Part C and the other Transaction Documents referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Article IV Part C and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Corporation herein.

f) Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

g) Notice to the Holders.

i. Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Corporation shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Conversion by Holder. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered to each Holder at its last address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address set forth above Attention: Neil Dey, e-mail address neil.dey@bluejaydx.com or such other facsimile number, e-mail address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 8. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number or address of such Holder appearing on the books of the Corporation, or if no such facsimile number or address appears on the books of the Corporation, at the principal place of business of such Holder, as set forth in the Purchase Agreement. Any notice or other communication or deliveries hereunder 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 set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth in this Section 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 second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Article IV Part C shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages and accrued dividends, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Article IV Part C shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware without regard to the principles of conflict of laws thereof. All legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by any of the Transaction Documents (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). The Corporation and each Holder hereby irrevocably submits to the exclusive jurisdiction of the New York Courts 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 such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. The Corporation and each Holder 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 this Article IV Part C 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 other manner permitted by applicable law. The Corporation and each Holder hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Article IV Part C or the transactions contemplated hereby. If the Corporation or any Holder shall commence an action or proceeding to enforce any provisions of this Article IV Part C, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

e) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Article IV Part C shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Article IV Part C or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Article IV Part C on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Article IV Part C on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

f) Severability. If any provision of this Article IV Part C is invalid, illegal or unenforceable, the balance of this Article IV Part C shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Article IV Part C and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Converted or Redeemed Preferred Stock. Shares of Preferred Stock may only be issued pursuant to the Debentures. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series D Preferred Stock.

ARTICLE V.
BOARD OF DIRECTORS

Section 5.1 Board Powers. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors. In addition to the powers and authority expressly conferred upon the Board of Directors by statute, this Amended and Restated Certificate or the Bylaws of the Corporation ("Bylaws"), the Board of Directors is hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Amended and Restated Certificate and any Bylaws adopted by the stockholders; provided, however, that no Bylaws hereafter adopted by the stockholders shall invalidate any prior act of the Board of Directors that would have been valid if such Bylaws had not been adopted.

Section 5.2 Number, Election and Term. For the management of the business and for the conduct of the affairs of the Corporation it is further provided that:

a) The number of directors which shall constitute the whole Board of Directors shall be fixed exclusively by one or more resolutions adopted from time to time by the Board of Directors. Each director shall hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation, disqualification or removal. Directors need not be residents of the state of incorporation or stockholders of the Corporation. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide. No decrease in the number of directors shall shorten the term of any incumbent director.

b) Except as otherwise expressly provided by the DGCL or this Amended and Restated Certificate, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 5.3 Newly Created Directorships and Vacancies. Subject to the special rights of the holders of one or more outstanding series of Preferred Stock to elect directors, except as otherwise provided by law, any vacancies on the Board of Directors resulting from death, resignation, disqualification, retirement, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall be filled exclusively by the affirmative vote of a majority of the directors then in office, even though less than a quorum, or by a sole remaining director (other than any directors elected by the separate vote of one or more outstanding series of Preferred Stock), and shall not be filled by the stockholders. Any director appointed in accordance with the preceding sentence shall hold office until the expiration of the term to which such director shall have been appointed or until his or her earlier death, resignation, retirement, disqualification, or removal.

Section 5.4 Preferred Stock – Directors. Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate (including any Certificate of Designation). Notwithstanding anything to the contrary in this Article V, the number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to Section 5.2(a) of this Article V, and the total number of directors constituting the whole Board of Directors shall be automatically adjusted accordingly. Except as otherwise provided in the Certificate of Designation(s) in respect of one or more series of Preferred Stock, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such Certificate of Designation(s), the terms of office of all such additional directors elected by the holders of such series of Preferred Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such director thereupon shall cease to be qualified as, and shall cease to be, a director) and the total authorized number of directors of the Corporation shall automatically be reduced accordingly.

Section 5.5 Quorum. A quorum for the transaction of business by the directors shall be set forth in the Bylaws.

ARTICLE VI.
BYLAWS

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal Bylaws of the Corporation. In addition to any vote of the holders of any class or series of stock of the Corporation required by applicable law or by this Amended and Restated Certificate (including any Certificate of Designation in respect of one or more series of Preferred Stock) or the Bylaws of the Corporation, the adoption, amendment or repeal of the Bylaws of the Corporation by the stockholders of the Corporation shall require the affirmative vote of the holders of at least a majority the voting power of all of the then outstanding shares of voting stock of the Corporation entitled to vote generally in an election of directors.

ARTICLE VII.
MEETINGS OF STOCKHOLDERS; ACTION BY WRITTEN CONSENT

Section 7.1 Meetings. Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of the stockholders of the Corporation, and shall not be taken by written consent in lieu of a meeting. Notwithstanding the foregoing, any action required or permitted to be taken by the holders of any series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, to the extent expressly so provided by the applicable Certificate of Designation relating to such series of Preferred Stock, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant series of Preferred Stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in accordance with the applicable provisions of the DGCL. Subject to the special rights of the holders of one or more series of Preferred Stock, special meetings of the stockholders of the Corporation may be called, for any purpose or purposes, at any time only by or at the direction of the Board of Directors, the Chief Executive Officer or the President, and shall not be called by any other person or persons.

Section 7.2 Advance Notice. Advance notice of stockholder nominations for the election of directors and of other business proposed 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.

ARTICLE VIII.
LIMITED LIABILITY; INDEMNIFICATION

Section 8.1 Director Liability. No director of the Corporation shall have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. Any amendment, repeal or modification of this Article VIII, or the adoption of any provision of the Restated Certificate inconsistent with this Article VIII, shall not adversely affect any right or protection of a director of the Corporation with respect to any act or omission occurring prior to such amendment, repeal, modification or adoption. If the DGCL is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

Section 8.2 Indemnification and Expenses. The Corporation shall have the power to provide rights to indemnification and advancement of expenses to its current and former officers, directors, employees and agents and to any person who is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

ARTICLE IX.
EXCLUSIVE FORUM FOR CERTAIN LAWSUITS

Section 9.1 Forum. Other than with regard to Article IV Part C, which shall be subject to the provisions set forth in Article IV Part C, and unless the Corporation consents in writing to the selection of an alternative forum, (a) the Court of Chancery (the "Chancery Court") of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action, suit or proceeding brought on behalf of the Corporation, (ii) any action, suit or proceeding asserting a claim of breach of a fiduciary duty owed by any director or officer of the Corporation to the Corporation or to the Corporation's stockholders, (iii) any action, suit or proceeding arising pursuant to any provision of the DGCL or the bylaws of the Corporation or this Amended and Restated Certificate (as either may be amended from time to time) or (iv) any action, suit or proceeding asserting a claim against the Corporation governed by the internal affairs doctrine; and (b) subject to the preceding provisions of this Article IX, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. If any action the subject matter of which is within the scope of clause (a) of this Section 9.1 is filed in a court other than the courts in the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (x) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of clause (a) of this Section 9.1 and (y) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. If any action the subject matter of which is within the scope of clause (b) of this Section 9.1 is filed in a court other than the federal district courts of the United States of America (a "Foreign Securities Act Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the federal district courts of the United States of America in connection with any action brought in any such court to enforce clause (b) (a "Securities Act Enforcement Action"), and (ii) having service of process made upon such stockholder in any such Securities Act Enforcement Action by service upon such stockholder's counsel in the Foreign Securities Act Action as agent for such stockholder.

Section 9.2 Consent to Jurisdiction. Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article IX. Notwithstanding the foregoing, the provisions of this Article IX shall not apply to suits brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts of the United States have exclusive jurisdiction.

Section 9.3 Severability. If any provision or provisions of this Article IX shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article IX (including, without limitation, each portion of any sentence of this Article IX containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. 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 Article IX.

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Exhibit 3.2

Amended and Restated Bylaws of

BlueJay Diagnostics, Inc.

(a Delaware corporation)

Amended and Restated on October 21, 2021

Table of Contents

Amended and Restated Bylaws of
BlueJay Diagnostics, Inc.

Article I—Corporate Offices

1.1 Registered Office.

The address of the registered office of BlueJay Diagnostics, Inc. (the "Corporation") in the State of Delaware, and the name of its registered agent at such address, shall be as set forth in the Corporation's certificate of incorporation, as the same may be amended and/or restated from time to time (the "Certificate of Incorporation").

1.2 Other Offices.

The Corporation may have additional offices at any place or places, within or outside the State of Delaware, as the Corporation's board of directors (the "Board") may from time to time establish or as the business of the Corporation may require.

Article II—Meetings of Stockholders

2.1 Place of Meetings.

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office.

2.2 Annual Meeting.

The Board shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and other proper business properly brought before the meeting in accordance with Section 2.4 of these bylaws may be transacted. The Board may postpone, reschedule or cancel any previously scheduled annual meeting of stockholders.

2.3 Special Meeting.

Special meetings of the stockholders may be called only by such persons and only in such manner as set forth in the Certificate of Incorporation.

No business may be transacted at any special meeting of stockholders other than the business specified in the notice of such meeting. The Board may postpone, reschedule or cancel any previously scheduled special meeting of stockholders.

2.4 Notice of Business to be Brought before a Meeting.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in a notice of meeting given by or at the direction of the Board, (ii) if not specified in a notice of meeting, otherwise brought before the meeting by the Board or the Chairman of the Board or (iii) otherwise properly brought before the meeting by a stockholder present in person who (A) (1) was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.4 and at the time of the meeting, (2) is entitled to vote at the meeting and (3) has complied with this Section 2.4 in all applicable respects or (B) properly made such proposal (for inclusion in the Corporation's proxy statement) in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"). The foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. The only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 2.3, and stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders. For purposes of this Section 2.4, "present in person" shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or a qualified representative of such proposing stockholder, appear at such annual meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Stockholders seeking to nominate persons for election to the Board must comply with Section 2.5, and this Section 2.4 shall not be applicable to nominations except as expressly provided in Section 2.5.

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.4. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one-year anniversary of the preceding year's annual meeting; *provided*, *however*, that if no annual meeting was held in the preceding year, to be timely, a stockholder's notice must be so delivered, or mailed and received, not earlier than the close of business on the one hundred and twentieth (120^{th}) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90^{th}) day prior to such annual meeting or, if later, the tenth (10^{th}) day following the day on which public disclosure of the date of such annual meeting was first made by the Corporation; *provided*, *further*, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, to be timely, a stockholder's notice must be so delivered, or mailed and received, not later than the ninetieth (90^{th}) day prior to such annual meeting or, if later, the tenth (10^{th}) day following the day on which public disclosure of the date of such annual meeting was first made by the Corporation (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Section 2.4, a stockholder's notice to the Secretary of the Corporation shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as "Stockholder Information");

(ii) As to each Proposing Person, (A) the full notional amount of any securities that, directly or indirectly, underlie any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) ("Synthetic Equity Position") and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation; *provided* that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, *provided, further*, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer, (B) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (C) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (D) any other material relationship between such Proposing Person, on the one hand, and the Corporation or any affiliate of the Corporation, on the other hand, (E) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation or any affiliate of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (F) a representation that such Proposing Person intends or is part of a group that intends to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or otherwise solicit proxies from stockholders in support of such proposal and (G) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (G) are referred to as "Disclosable Interests"); *provided*, *however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner; and

(iii) As to each item of business that the stockholder proposes to bring before the annual meeting, (A) a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws, the language of the proposed amendment), and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder(s) or person(s) who have a right to acquire beneficial ownership at any time in the future of the shares of any class or series of the Corporation or any other person or entity (including their names) in connection with the proposal of such business by such stockholder; and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; *provided*, *however*, that the disclosures required by this Section 2.4(c)(iii) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner.

For purposes of this Section 2.4, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, and (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation.

(d) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(e) Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.4. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.4, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.

(f) This Section 2.4 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made in accordance with Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement. In addition to the requirements of this Section 2.4 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 2.4 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(g) For purposes of these bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

2.5 Notice of Nominations for Election to the Board.

(a) Nominations of any person for election to the Board at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board, including by any committee or persons authorized to do so by the Board or these bylaws, or (ii) by a stockholder present in person (A) who was a record owner of shares of the Corporation both at the time of giving the notice provided for in this Section 2.5 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 2.5 as to such notice and nomination. For purposes of this Section 2.5, "present in person" shall mean that the stockholder proposing that the business be brought before the meeting of the Corporation, or a qualified representative of such stockholder, appear at such meeting. A "qualified representative" of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. The foregoing clause (ii) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting or special meeting.

(b) (i) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting, the stockholder must (1) provide Timely Notice (as defined in Section 2.4) thereof in writing and in proper form to the Secretary of the Corporation, (2) provide the information, agreements and questionnaires with respect to such stockholder and its candidate for nomination as required to be set forth by this Section 2.5 and (3) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5.

(ii) Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling a special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board at a special meeting, the stockholder must (i) provide Timely Notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, (ii) provide the information with respect to such stockholder and its candidate for nomination as required by this Section 2.5 and (iii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred twentieth (120^{th}) day prior to such special meeting and not later than the ninetieth (90^{th}) day prior to such special meeting or, if later, the tenth (10^{th}) day following the day on which public disclosure (as defined in Section 2.4) of the date of such special meeting was first made.

(iii) In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(iv) In no event may a Nominating Person provide Timely Notice with respect to a greater number of director candidates than are subject to election by shareholders at the applicable meeting. If the Corporation shall, subsequent to such notice, increase the number of directors subject to election at the meeting, such notice as to any additional nominees shall be due on the later of (i) the conclusion of the time period for Timely Notice, (ii) the date set forth in Section 2.5(b)(ii) or (iii) the tenth day following the date of public disclosure (as defined in Section 2.4) of such increase.

(c) To be in proper form for purposes of this Section 2.5, a stockholder's notice to the Secretary of the Corporation shall set forth:

(i) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.4(c)(i), except that for purposes of this Section 2.5, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(c)(i));

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.4(c)(ii), except that for purposes of this Section 2.5, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(c)(ii) and the disclosure with respect to the business to be brought before the meeting in Section 2.4(c)(ii) shall be made with respect to the election of directors at the meeting); and

(iii) As to each candidate whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such candidate for nomination that would be required to be set forth in a stockholder's notice pursuant to this Section 2.5 if such candidate for nomination were a Nominating Person, (B) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such candidate's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of any direct or indirect material interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or his or her respective associates or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the candidate for nomination were a director or executive officer of such registrant and (D) a completed and signed questionnaire, representation and agreement as provided in Section 2.5(f).

For purposes of this Section 2.5, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any other participant in such solicitation.

(d) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any nomination or to submit any new nomination.

(e) In addition to the requirements of this Section 2.5 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

(f) To be eligible to be a candidate for election as a director of the Corporation at an annual or special meeting, a candidate must be nominated in the manner prescribed in Section 2.5 and the candidate for nomination, whether nominated by the Board or by a stockholder of record, must have previously delivered (in accordance with the time period prescribed for delivery in a notice to such candidate given by or on behalf of the Board), to the Secretary of the Corporation at the principal executive offices of the Corporation, (i) a completed written questionnaire (in a form provided by the Corporation) with respect to the background, qualifications, stock ownership and independence of such proposed nominee and (ii) a written representation and agreement (in form provided by the Corporation) that such candidate for nomination (A) is not and, if elected as a director during his or her term of office, will not become a party to (1) any agreement, arrangement or understanding with, and has not given and will not give any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") or (2) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (B) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation or reimbursement for service as a director that has not been disclosed to the Corporation and (C) if elected as a director of the Corporation, will comply with all applicable corporate governance, conflict of interest, confidentiality, stock ownership and trading and other policies and guidelines of the Corporation applicable to directors and in effect during such person's term in office as a director (and, if requested by any candidate for nomination, the Secretary of the Corporation shall provide to such candidate for nomination all such policies and guidelines then in effect).

(g) The Board may also require any proposed candidate for nomination as a Director to furnish such other information as may reasonably be requested by the Board in writing prior to the meeting of stockholders at which such candidate's nomination is to be acted upon in order for the Board to determine the eligibility of such candidate for nomination to be an independent director of the Corporation in accordance with the Corporation's corporate governance guidelines.

(h) A candidate for nomination as a director shall further update and supplement the materials delivered pursuant to this Section 2.5, if necessary, so that the information provided or required to be provided pursuant to this Section 2.5 shall be true and correct as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation (or any other office specified by the Corporation in any public announcement) not later than five (5) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(i) No candidate shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Nominating Person seeking to place such candidate's name in nomination has complied with this Section 2.5. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with Section 2.5, and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect.

(j) Notwithstanding anything in these bylaws to the contrary, no candidate for nomination shall be eligible to be seated as a director of the Corporation unless nominated and elected in accordance with Section 2.5.

2.6 Notice of Stockholders' Meetings.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the notice of any meeting of stockholders shall be sent or otherwise given in accordance with Section 8.1 of these bylaws 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. The notice shall specify the place, if any, date and time of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.7 Quorum.

Unless otherwise provided by law, the Certificate of Incorporation or these bylaws, the holders of a majority in voting power of the stock issued and outstanding and entitled to vote, present in person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, a quorum is not present or represented at any meeting of the stockholders, then either (i) the person presiding over the meeting or (ii) a majority in voting power of the stockholders entitled to vote at the meeting, present in person, or by remote communication, if applicable, or represented by proxy, shall have power to recess the meeting or adjourn the meeting from time to time in the manner provided in Section 2.8 of these bylaws until a quorum is present or represented. At any recessed or adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.8 Adjourned Meeting; Notice.

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, 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 such adjourned meeting are announced at the meeting at which the adjournment is taken. At any 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, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such meeting as of the record date so fixed for notice of such adjourned meeting.

2.9 Conduct of Business.

The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the person presiding over the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the person presiding over the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the person presiding over the meeting), shall, if the facts warrant, determine and declare to the meeting that a matter of business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

2.10 Voting.

Except as may be otherwise provided in the Certificate of Incorporation, these bylaws or the DGCL, each stockholder shall be entitled to one (1) vote for each share of capital stock held by such stockholder.

Except as otherwise provided by the Certificate of Incorporation, at all duly called or convened meetings of stockholders at which a quorum is present, for the election of directors, a plurality of the votes cast shall be sufficient to elect a director. Except as otherwise provided by the Certificate of Incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, each other matter presented to the stockholders at a duly called or convened meeting at which a quorum is present shall be decided by the affirmative vote of the holders of a majority in voting power of the votes cast (excluding abstentions and broker non-votes) on such matter.

2.11 Record Date for Stockholder Meetings and Other Purposes.

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 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, and which record date shall, unless otherwise required by law, not be more than sixty (60) days nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is first 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 may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting; and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of capital stock, or for the purposes of any other lawful action, the Board may fix 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 adopts the resolution relating thereto.

2.12 Proxies.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of an electronic transmission which sets forth or is submitted with information from which it can be determined that the transmission was authorized by the stockholder.

2.13 List of Stockholders Entitled to Vote.

The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10^{th}) day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) 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 (ii) during ordinary business hours, at the Corporation's principal executive office. 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. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.13 or to vote in person or by proxy at any meeting of stockholders.

2.14 Inspectors of Election.

Before any meeting of stockholders, the Corporation shall appoint an inspector or inspectors of election to act at the meeting or its adjournment and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If any person appointed as inspector or any alternate fails to appear or fails or refuses to act, then the person presiding over the meeting shall appoint a person to fill that vacancy.

Such inspectors shall:

(i) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting and the validity of any proxies and ballots;

(ii) count all votes or ballots;

(iii) count and tabulate all votes;

(iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspector(s); and

(v) certify its or their determination of the number of shares represented at the meeting and its or their count of all votes and ballots.

Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspection with strict impartiality and according to the best of such inspector's ability. Any report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein. The inspectors of election may appoint such persons to assist them in performing their duties as they determine.

Article III—Directors

3.1 Powers.

Except as otherwise provided by the Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

3.2 Number of Directors.

Subject to the Certificate of Incorporation, the total number of directors constituting the Board shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Election, Qualification and Term of Office of Directors.

Except as provided in Section 3.4 of these bylaws, and subject to the Certificate of Incorporation, each director, including a director elected to fill a vacancy or newly created directorship, shall hold office until the expiration of the term of the class, if any, for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation, disqualification or removal. Directors need not be stockholders. The Certificate of Incorporation or these bylaws may prescribe qualifications for directors.

3.4 Resignation and Vacancies.

Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. The resignation shall take effect at the time specified therein or upon the happening of an event specified therein, and if no time or event is specified, at the time of its receipt. When one or more directors so resigns and the resignation is effective at a future date or upon the happening of an event to occur on 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 as provided in Section 3.3.

Unless otherwise provided in the Certificate of Incorporation or these bylaws, vacancies resulting from the death, resignation, disqualification or removal of any director, and newly created directorships resulting from any increase in the authorized number of directors shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

3.5 Place of Meetings; Meetings by Telephone.

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this bylaw shall constitute presence in person at the meeting.

3.6 Regular Meetings.

Regular meetings of the Board may be held within or outside the State of Delaware and at such time and at such place as which has been designated by the Board 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 means of electronic transmission. No further notice shall be required for regular meetings of the Board.

3.7 Special Meetings; Notice.

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the Chief Executive Officer, the President, the Secretary of the Corporation or a majority of the total number of directors constituting the Board.

Notice of the time and place of special meetings shall be:

(i) delivered personally by hand, by courier or by telephone;

(ii) sent by United States first-class mail, postage prepaid;

(iii) sent by facsimile or electronic mail; or

(iv) sent by other means of electronic transmission,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, or other address for electronic transmission, as the case may be, as shown on the Corporation's records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or electronic mail, or (iii) sent by other means of electronic transmission, it shall be delivered or sent at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by U.S. mail, it shall be deposited in the U.S. mail at least four (4) days before the time of the holding of the meeting. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting.

3.8 Quorum.

At all meetings of the Board, unless otherwise provided by the Certificate of Incorporation, a majority of the total number of directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the Certificate of Incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.9 Board Action without a 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, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board, or the committee thereof, in the same paper or electronic form as the minutes are maintained. Such action by written consent or consent by electronic transmission shall have the same force and effect as a unanimous vote of the Board.

3.10 Fees and Compensation of Directors.

Unless otherwise restricted by the Certificate of Incorporation or these bylaws, the Board shall have the authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

Article IV—Committees

4.1 Committees of Directors.

The Board may designate one (1) or more committees, each committee to consist, of one (1) or more of the directors of the Corporation. The Board may designate one (1) or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board 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 that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaw of the Corporation.

4.2 Committee Minutes.

Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

4.3 Meetings and Actions of Committees.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(i) Section 3.5 (place of meetings; meetings by telephone);

(ii) Section 3.6 (regular meetings);

(iii) Section 3.7 (special meetings; notice);

(iv) Section 3.9 (board action without a meeting); and

(v) Section 7.12 (waiver of notice),

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members; *provided, however*, that:

(i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(ii) special meetings of committees may also be called by resolution of the Board or the chairperson of the applicable committee; and

(iii) the Board may adopt rules for the governance of any committee to override the provisions that would otherwise apply to the committee pursuant to this Section 4.3, *provided* that such rules do not violate the provisions of the Certificate of Incorporation or applicable law.

4.4 Subcommittees.

Unless otherwise provided in the Certificate of Incorporation, these bylaws or the resolutions of the Board designating the committee, a committee may create one (1) or more subcommittees, each subcommittee to consist of one (1) or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

Article V—Officers

5.1 Officers.

The officers of the Corporation shall include a Chief Executive Officer and a Chief Financial Officer. The Corporation may also have, at the discretion of the Board, a Chairperson of the Board, a Vice Chairperson of the Board, a Secretary, a Treasurer, one (1) or more Vice Presidents, one (1) or more Assistant Vice Presidents, one (1) or more Assistant Treasurers, one (1) or more Assistant Secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person. No officer need be a stockholder or director of the Corporation.

5.2 Appointment of Officers.

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws.

5.3 Subordinate Officers.

The Board may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

5.4 Removal and Resignation of Officers.

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices.

Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 5.2.

5.6 Representation of Shares of Other Corporations.

The Chairperson of the Board, the Chief Executive Officer, or the President of this Corporation, or any other person authorized by the Board, the Chief Executive Officer or the President, is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all shares or voting securities of any other corporation or other person standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 Authority and Duties of Officers.

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be provided herein or designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

5.8 Compensation.

The compensation of the officers of the Corporation for their services as such shall be fixed from time to time by or at the direction of the Board. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he or she is also a director of the Corporation.

Article VI—Records

A stock ledger consisting of one or more records in which the names of all of the Corporation's stockholders of record, the address and number of shares registered in the name of each such stockholder, and all issuances and transfers of stock of the corporation are recorded in accordance with Section 224 of the DGCL shall be administered by or on behalf of the Corporation. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), *provided* that the records so kept can be converted into clearly legible paper form within a reasonable time and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in Sections 219 and 220 of the DGCL, (ii) record the information specified in Sections 156, 159, 217(a) and 218 of the DGCL, and (iii) record transfers of stock as governed by Article 8 of the Uniform Commercial Code as adopted in the State of Delaware.

Article VII—General Matters

7.1 Execution of Corporate Contracts and Instruments.

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances.

7.2 Stock Certificates.

The shares of the Corporation shall be represented by certificates or shall be uncertificated. 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 a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by, any two officers authorized to sign stock certificates representing the number of shares registered in certificate form. The Chairperson or Vice Chairperson of the Board, the Chief Executive Officer, the President, the Chief Legal Officer, Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Corporation shall be specifically authorized to sign stock certificates. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

7.3 Lost Certificates.

Except as provided in this Section 7.3, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.4 Shares Without Certificates

The Corporation may adopt a system of issuance, recordation and transfer of its shares of stock by electronic or other means not involving the issuance of certificates, provided the use of such system by the Corporation is permitted in accordance with applicable law.

7.5 Construction; Definitions.

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural and the plural number includes the singular.

7.6 Dividends.

The Board, subject to any restrictions contained in either (i) the DGCL or (ii) the Certificate of Incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

7.7 Fiscal Year.

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

7.8 Seal.

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

7.9 Transfer of Stock.

Shares of the stock of the Corporation shall be transferable in the manner prescribed by law and in these bylaws. Shares of stock of the Corporation shall be transferred on the books of the Corporation only by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or by delivery of duly executed instructions with respect to uncertificated shares), with such evidence of the authenticity of such endorsement or execution, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing the names of the persons from and to whom it was transferred.

7.10 Stock Transfer Agreements.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series 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.

7.11 Registered Stockholders.

The Corporation:

(i) 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

(ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Delaware.

7.12 Waiver of Notice.

Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person 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. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these bylaws.

Article VIII—Notice

8.1 Delivery of Notice; Notice by Electronic Transmission.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provisions of the DGCL, the Certificate of Incorporation, or these bylaws may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of the Corporation and shall be given (1) if mailed, when the notice is deposited in the U.S. mail, postage prepaid, (2) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address or (3) if given by electronic mail, when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation.

Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the Corporation. Notwithstanding the provisions of this paragraph, the Corporation may give a notice by electronic mail in accordance with the first paragraph of this section without obtaining the consent required by this paragraph.

Any notice given pursuant to the preceding paragraph shall be deemed given:

(i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(ii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(iii) if by any other form of electronic transmission, when directed to the stockholder.

Notwithstanding the foregoing, a notice may not be given by an electronic transmission from and after the time that (1) the Corporation is unable to deliver by such electronic transmission two (2) consecutive notices given by the Corporation and (2) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; *provided, however*, that the inadvertent failure to discover such inability shall not invalidate any meeting or other action.

An affidavit of the Secretary or an Assistant Secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Article IX—Indemnification

9.1 Indemnification of Directors and Officers.

Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (a "covered person"), whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent allowed under the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnities in connection therewith, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. A covered person shall be indemnified and held harmless by the Corporation to the fullest extent permitted under DGCL, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnities in connection therewith. Notwithstanding the foregoing, except as otherwise provided in Section 9.4, the Corporation shall be required to indemnify a person in connection with a Proceeding initiated by such person only if the Proceeding was authorized in the specific case by the Board.

9.2 Indemnification of Others.

The Corporation shall have the power to indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the Corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such Proceeding.

9.3 Good Faith.

The termination of any Proceeding by judgment order, settlement, conviction, or plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation, and further with respect to any criminal action proceeding, that the person had reasonable cause to believe that his conduct was unlawful.

9.4 Prepayment of Expenses.

The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including, without limitation, attorneys' fees) incurred by any covered person, and may also pay the expenses incurred by any employee or agent of the Corporation, in defending any Proceeding in advance of its final disposition; *provided, however*, that such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Article IX or otherwise.

9.5 Determination; Claim.

If a claim for indemnification (following the final disposition of such Proceeding) under this Article IX is not paid in full within sixty (60) days, or a claim for advancement of expenses under this Article IX is not paid in full within thirty (30) days, after a written claim therefor has been received by the Corporation the claimant may thereafter (but not before) file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Corporation shall have the burden of proving that the claimant was not entitled to the requested indemnification or payment of expenses under applicable law.

9.6 Non-Exclusivity of Rights.

The rights conferred on any person by this Article IX shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

9.7 Insurance.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust enterprise or non-profit entity against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

9.8 Other Indemnification.

The Corporation's obligation, if any, to indemnify or advance expenses to any person who was or is serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such person actually collects as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.

9.9 Continuation of Indemnification.

The rights to indemnification and to prepayment of expenses provided by, or granted pursuant to, this Article IX shall continue notwithstanding that the person has ceased to be a director or officer of the Corporation and shall inure to the benefit of the estate, heirs, executors, administrators, legatees and distributees of such person.

9.10 Amendment or Repeal; Interpretation.

The provisions of this Article IX shall constitute a contract between the Corporation, on the one hand, and, on the other hand, each individual who serves or has served as a director or officer of the Corporation (whether before or after the adoption of these bylaws), in consideration of such person's performance of such services, and pursuant to this Article IX the Corporation intends to be legally bound to each such current or former director or officer of the Corporation. With respect to current and former directors and officers of the Corporation, the rights conferred under this Article IX are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of theses bylaws. With respect to any directors or officers of the Corporation who commence service following adoption of these bylaws, the rights conferred under this provision shall be present contractual rights and such rights shall fully vest, and be deemed to have vested fully, immediately upon such director or officer commencing service as a director or officer of the Corporation. Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection (i) hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification or (ii) under any agreement providing for indemnification or advancement of expenses to an officer or director of the Corporation in effect prior to the time of such repeal or modification.

Any reference to an officer of the Corporation in this Article IX shall be deemed to refer exclusively to the Chief Executive Officer, the President and the Secretary of the Corporation, or other officer of the Corporation appointed by (x) the Board pursuant to Article V of these bylaws or (y) an officer to whom the Board has delegated the power to appoint officers pursuant to Article V of these bylaws, and any reference to an officer of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be deemed to refer exclusively to an officer appointed by the board of directors (or equivalent governing body) of such other entity pursuant to the certificate of incorporation and bylaws (or equivalent organizational documents) of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The fact that any person who is or was an employee of the Corporation or an employee of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise has been given or has used the title of "Vice President" or any other title that could be construed to suggest or imply that such person is or may be an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall not result in such person being constituted as, or being deemed to be, an officer of the Corporation or of such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise for purposes of this Article IX.

Article X—Amendments

The Board is expressly empowered to adopt, amend or repeal the bylaws of the Corporation. The stockholders also shall have power to adopt, amend or repeal the bylaws of the Corporation; *provided, however*, that such action by stockholders shall require, in addition to any other vote required by the Certificate of Incorporation or applicable law, the affirmative vote of the holders of at least a majority of the voting power of all the then-outstanding shares of voting stock of the Corporation with the power to vote generally in an election of directors, voting together as a single class.

Article XI—Forum Selection

Other than with regard to Article IV Part C of the Certificate of Incorporation, which shall be subject to the provisions set forth of that section, and unless the Corporation consents in writing to the selection of an alternative forum, (a) the Court of Chancery (the "Chancery Court") of the State of Delaware (or, in the event that the Chancery Court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative Proceeding brought on behalf of the Corporation, (ii) any Proceeding asserting a claim of breach of a fiduciary duty owed by any director or officer of the Corporation to the Corporation or to the Corporation's stockholders, (iii) any Proceeding arising pursuant to any provision of the DGCL or the Certificate of Incorporation or these bylaws (as either may be amended from time to time) or (iv) any Proceeding asserting a claim against the Corporation governed by the internal affairs doctrine; and (b) subject to the preceding provisions of this Article XI, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. If any action the subject matter of which is within the scope of clause (a) of this Article XI is filed in a court other than the courts in the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (x) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought in any such court to enforce the provisions of clause (a) of this Article XI and (y) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. If any action the subject matter of which is within the scope of clause (b) of this Article XI is filed in a court other than the federal district courts of the United States of America (a "Foreign Securities Act Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the federal district courts of the United States of America in connection with any action brought in any such court to enforce clause (b) (a "Securities Act Enforcement Action"), and (ii) having service of process made upon such stockholder in any such Securities Act Enforcement Action by service upon such stockholder's counsel in the Foreign Securities Act Action as agent for such stockholder.

Any person or entity purchasing or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to this Article XI. Notwithstanding the foregoing, the provisions of this Article XI shall not apply to suits brought to enforce any liability or duty created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts of the United States have exclusive jurisdiction.

If any provision or provisions of this Article XI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XI (including, without limitation, each portion of any sentence of this Article XI containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. 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 Article XI.

Article XII—Definitions

As used in these bylaws, unless the context otherwise requires, the following terms shall have the following meanings:

An "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

An "electronic mail" means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Corporation who is available to assist with accessing such files and information).

An "electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part" of the address) and a reference to an internet domain (commonly referred to as the "domain part" of the address), whether or not displayed, to which electronic mail can be sent or delivered.

The term "person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity.

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Exhibit 4.1

NUMBER

NUMBER
C-
SHARES
SEE REVERSE FOR CERTAIN
DEFINITIONS
CUSIP 095633 103

BLUEJAY DIAGNOSTICS, INC.

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE
COMMON STOCK

This Certifies that

is the owner of

FULLY PAID AND NON-ASSESSABLE SHARES OF THE PAR VALUE OF $0.0001 EACH OF THE COMMON STOCK OF

BLUEJAY DIAGNOSTICS, INC.
(THE "CORPORATION")

transferable on the books of the Corporation in person or by duly authorized attorney upon surrender of this certificate properly endorsed.

This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar.

Witness the seal of the Corporation and the facsimile signatures of its duly authorized officers.

Authorized Signatory

[Corporate Seal]
Delaware

Authorized Signatory

Transfer Agent

BLUEJAY DIAGNOSTICS, INC.

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 of the Corporation and the qualifications, limitations, or restrictions of such preferences and/or rights. This certificate and the shares represented thereby are issued and shall be held subject to all the provisions of the Company's amended and restated certificate of incorporation and all amendments thereto and resolutions of the Board of Directors providing for the issue of securities (copies of which may be obtained from the secretary of the Corporation), to all of which the holder of this certificate by acceptance hereof assents. The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	— as tenants in common	UNIF GIFT MIN ACT	—	Custodian	
TEN ENT	— as tenants by the entireties			(Cust)	(Minor)
JT TEN	— as joint tenants with right of survivorship and not as tenants in common			under Uniform Gifts to Minors Act	
				(State)	

Additional abbreviations may also be used though not in the above list.

For value received, *hereby sells, assigns and transfers unto*

(PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER(S) OF ASSIGNEE(S))

(PLEASE PRINT OR TYPEWRITE NAME(S) AND ADDRESS(ES), INCLUDING ZIP CODE, OF ASSIGNEE(S))

Shares of the capital stock represented by the within Certificate, and hereby irrevocably constitutes and appoints

Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated:

NOTICE: THE SIGNATURE(S) 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.

Signature(s) Guaranteed:
By

THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15 (OR ANY SUCCESSOR RULE).

Exhibit 4.2

CLASS A COMMON STOCK PURCHASE WARRANT
BLUEJAY DIAGNOSTICS, INC.

Warrant Shares: _____ Initial Exercise Date: _____ __, 2021

THIS CLASS A COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on _____ __, 2026[1] (the "Termination Date") but not thereafter, to subscribe for and purchase from Bluejay Diagnostics, Inc., a Delaware corporation (the "Company"), up to _____ shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b). This Warrant shall initially be issued and maintained in the form of a security held in book-entry form and the Depository Trust Company or its nominee ("DTC") shall initially be the sole registered holder of this Warrant, subject to a Holder's right to elect to receive a Warrant in certificated form pursuant to the terms of the Warrant Agency Agreement, in which case this sentence shall not apply.

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"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; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

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[1] Insert the date that is the 5 year anniversary of the Initial Exercise Date, provided that, if such date is not a Trading Day, insert the immediately following Trading Day.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Registration Statement" means the Company's registration statement on Form S-1 (File No. 333-260029).

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Subsidiary" means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Trading Day" means a day on which the Common Stock is traded on a Trading Market.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

"Transfer Agent" means Continental Stock Transfer & Trust Company, the current transfer agent of the Company, with a mailing address of 17 Battery Place, New York, New York 10004, and any successor transfer agent of the Company.

"Underwriting Agreement" means the underwriting agreement, dated as of _____, among the Company and _____ as representative of the underwriters named therein, as amended, modified or supplemented from time to time in accordance with its terms.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"Warrant Agency Agreement" means that certain warrant agency agreement, dated on or about the Initial Exercise Date, between the Company and the Warrant Agent.

"Warrant Agent" means the Transfer Agent and any successor warrant agent of the Company.

"Warrants" means this Warrant and other Common Stock purchase warrants issued by the Company pursuant to the Registration Statement.

Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 4:00 p.m. (New York City time) on the Trading Date prior to the Initial Exercise Date, the Company agrees to deliver the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date and the Initial Exercise Date shall be the Warrant Share Delivery Date for purposes hereunder, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by such Warrant Share Delivery Date. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

Notwithstanding the foregoing in this Section 2(a), a holder whose interest in this Warrant is a beneficial interest in certificate(s) representing this Warrant held in book-entry form through DTC (or another established clearing corporation performing similar functions), shall effect exercises made pursuant to this Section 2(a) by delivering to DTC (or such other clearing corporation, as applicable) the appropriate instruction form for exercise, complying with the procedures to effect exercise that are required by DTC (or such other clearing corporation, as applicable), subject to a Holder's right to elect to receive a Warrant in certificated form pursuant to the terms of the Warrant Agency Agreement, in which case this sentence shall not apply.

(b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be $5.00, subject to adjustment hereunder (the "Exercise Price").

(c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

(d) Mechanics of Exercise.

(i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, 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 (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

(vi) Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% (or, upon election by a Holder prior to the issuance of any Warrants, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company or any Subsidiary, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

(e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(f) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company (or any of its Subsidiaries) is a party, any sale or transfer of all or substantially all of its assets, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(g) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant, subject to the prior written consent of the Holder, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

Section 4. Transfer of Warrant.

(a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. If this Warrant is not held in global form through DTC (or any successor depositary), this Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Warrant Agent shall register this Warrant, upon records to be maintained by the Warrant Agent for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company and the Warrant Agent 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.

Section 5. Miscellaneous.

(a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

(d) Authorized Shares.

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 issuing the necessary 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 and payment for such Warrant Shares in accordance herewith, 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).

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 (i) 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, (ii) 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 (iii) 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.

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.

(e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Warrant (whether brought against a party hereto or their respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City 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 improper or is an inconvenient venue for such proceeding. 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 this Warrant 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 other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of this Warrant, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

(f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

(g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(h) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Exercise, shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 360 Massachusetts Avenue, Suite 203, Acton, MA 01720, Attention: Chief Financial Officer, email address: _____, or such other email address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, e-mail address or address of such Holder appearing on the books of the Company. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section 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 second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

(i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holder or the beneficial owner of this Warrant, on the other hand.

(m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(o) Warrant Agency Agreement. If this Warrant is held in global form through DTC (or any successor depositary), this Warrant is issued subject to the Warrant Agency Agreement. To the extent any provision of this Warrant conflicts with the express provisions of the Warrant Agency Agreement, the provisions of this Warrant shall govern and be controlling.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

BLUEJAY DIAGNOSTICS, INC.

By: _____
Name:
Title:

NOTICE OF EXERCISE

TO: BLUEJAY DIAGNOSTICS, INC.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), 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):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

ASSIGNMENT FORM

(*To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____ ___ , _____

Holder's Signature: _____

Holder's Address: _____

_____

Exhibit 4.3

CLASS B COMMON STOCK PURCHASE WARRANT
BLUEJAY DIAGNOSTICS, INC.

Warrant Shares: _____ Initial Exercise Date: _____ __, 2021

THIS CLASS B COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on _____ __, 2026[1] (the "Termination Date") but not thereafter, to subscribe for and purchase from Bluejay Diagnostics, Inc., a Delaware corporation (the "Company"), up to _____ shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b). This Warrant shall initially be issued and maintained in the form of a security held in book-entry form and the Depository Trust Company or its nominee ("DTC") shall initially be the sole registered holder of this Warrant, subject to a Holder's right to elect to receive a Warrant in certificated form pursuant to the terms of the Warrant Agency Agreement, in which case this sentence shall not apply.

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"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; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

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1 Insert the date that is the 5 year anniversary of the Initial Exercise Date, provided that, if such date is not a Trading Day, insert the immediately following Trading Day.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Registration Statement" means the Company's registration statement on Form S-1 (File No. 333-260029).

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Subsidiary" means any subsidiary of the Company and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Trading Day" means a day on which the Common Stock is traded on a Trading Market.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

"Transfer Agent" means Continental Stock Transfer & Trust Company, the current transfer agent of the Company, with a mailing address of 17 Battery Place, New York, New York 10004, and any successor transfer agent of the Company.

"Underwriting Agreement" means the underwriting agreement, dated as of _____, among the Company and Dawson James Securities, Inc. as representative of the underwriters named therein, as amended, modified or supplemented from time to time in accordance with its terms.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the holders of a majority in interest of the Warrants then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"Warrant Agency Agreement" means that certain warrant agency agreement, dated on or about the Initial Exercise Date, between the Company and the Warrant Agent.

"Warrant Agent" means the Transfer Agent and any successor warrant agent of the Company.

"Warrants" means this Warrant and other Common Stock purchase warrants issued by the Company pursuant to the Registration Statement.

Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise"). Within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. Notwithstanding the foregoing, with respect to any Notice(s) of Exercise delivered on or prior to 4:00 p.m. (New York City time) on the Trading Date prior to the Initial Exercise Date, the Company agrees to deliver the Warrant Shares subject to such notice(s) by 4:00 p.m. (New York City time) on the Initial Exercise Date and the Initial Exercise Date shall be the Warrant Share Delivery Date for purposes hereunder, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by such Warrant Share Delivery Date. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

Notwithstanding the foregoing in this Section 2(a), a holder whose interest in this Warrant is a beneficial interest in certificate(s) representing this Warrant held in book-entry form through DTC (or another established clearing corporation performing similar functions), shall effect exercises made pursuant to this Section 2(a) by delivering to DTC (or such other clearing corporation, as applicable) the appropriate instruction form for exercise, complying with the procedures to effect exercise that are required by DTC (or such other clearing corporation, as applicable), subject to a Holder's right to elect to receive a Warrant in certificated form pursuant to the terms of the Warrant Agency Agreement, in which case this sentence shall not apply.

(b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be $10.00, subject to adjustment hereunder (the "Exercise Price").

(c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

Notwithstanding anything to the contrary herein, a "cashless exercise" may occur after the earlier of (i) 10 Trading Days from the Initial Exercise Date of this Warrant or (ii) the time when $10.0 million of volume is traded in the Common Stock, if the VWAP of the Common Stock on any Trading Day on or after the Closing Date fails to exceed the Exercise Price in effect as of the Initial Exercise Date (subject to adjustment for any stock splits, stock dividends, stock combinations, recapitalizations and similar events). In such event, the aggregate number of Warrant Shares issuable in such cashless exercise pursuant to any given Notice of Exercise electing to effect a cashless exercise shall equal the product of (x) the aggregate number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise and (y) 1.00.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c).

(d) Mechanics of Exercise.

(i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), $10 per Trading Day (increasing to $20 per Trading Day on the fifth Trading Day after such liquidated damages begin to accrue) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, 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 (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

(vi) Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% (or, upon election by a Holder prior to the issuance of any Warrants, 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, that, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company or any Subsidiary, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Section 3(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant with the same effect as if such Successor Entity had been named as the Company herein.

(e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(f) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company (or any of its Subsidiaries) is a party, any sale or transfer of all or substantially all of its assets, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 20 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

(g) Voluntary Adjustment By Company. Subject to the rules and regulations of the Trading Market, the Company may at any time during the term of this Warrant, subject to the prior written consent of the Holder, reduce the then current Exercise Price to any amount and for any period of time deemed appropriate by the board of directors of the Company.

Section 4. Transfer of Warrant.

(a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. If this Warrant is not held in global form through DTC (or any successor depositary), this Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Warrant Agent shall register this Warrant, upon records to be maintained by the Warrant Agent for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company and the Warrant Agent 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.

Section 5. Miscellaneous.

(a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a "cashless exercise" pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

(d) Authorized Shares.

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 issuing the necessary 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 and payment for such Warrant Shares in accordance herewith, 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).

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 (i) 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, (ii) 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 (iii) 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.

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.

(e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Warrant (whether brought against a party hereto or their respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City 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 improper or is an inconvenient venue for such proceeding. 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 this Warrant 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 other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of this Warrant, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

(f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

(g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(h) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Exercise, shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 360 Massachusetts Avenue, Suite 203, Acton, MA 01720, Attention: Chief Financial Officer, email address: _____, or such other email address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, e-mail address or address of such Holder appearing on the books of the Company. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section 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 second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

(i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holder or the beneficial owner of this Warrant, on the other hand.

(m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(o) Warrant Agency Agreement. If this Warrant is held in global form through DTC (or any successor depositary), this Warrant is issued subject to the Warrant Agency Agreement. To the extent any provision of this Warrant conflicts with the express provisions of the Warrant Agency Agreement, the provisions of this Warrant shall govern and be controlling.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

BLUEJAY DIAGNOSTICS, INC.

By: _____
Name:
Title:

NOTICE OF EXERCISE

TO: BLUEJAY DIAGNOSTICS, INC.

(1) The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), 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):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

ASSIGNMENT FORM

(*To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: _____ __, _____

Holder's Signature: _____

Holder's Address: _____

_____

Exhibit 4.4

BLUEJAY DIAGNOSTICS, INC.

and

CONTINENTAL STOCK TRANSFER & TRUST COMPANY, as
Warrant Agent

Warrant Agency Agreement

Dated as of _____, 2021

WARRANT AGENCY AGREEMENT

WARRANT AGENCY AGREEMENT, dated as of _____, 2021 ("Agreement"), between Bluejay Diagnostics, Inc., a Delaware corporation (the "Company"), and Continental Stock Transfer & Trust Company (the "Warrant Agent").

W I T N E S S E T H

WHEREAS, pursuant to a registered offering by the Company of shares of common stock and/or shares of Series E convertible preferred stock (the "Preferred Stock") that are convertible into shares of common stock, par value $0.0001 per share (the "Common Stock"), and Warrants (as defined below), pursuant to an effective registration statement on Form S-1 (File No. 333-260029) (the "Registration Statement"), the Company wishes to issue Warrants in book entry form entitling the respective holders of the Warrants (the "Holders", which term shall include a Holder's transferees, successors and assigns and "Holder" shall include, if the Warrants are held in "street name", a Participant (as defined below) or a designee appointed by such Participant) to purchase an aggregate of up to 2,070,000 shares of Common Stock underlying the Class A Warrants (as defined below) and up to 2,070,000 shares of Common Stock underlying the Class B Warrants (as defined below) upon the terms and subject to the conditions hereinafter set forth (the "Offering");

WHEREAS, the shares of Preferred Stock and Warrants to be issued in connection with the Offering shall be immediately separable and will be issued separately, but will be purchased together in the Offering; and

WHEREAS, the Company wishes the Warrant Agent to act on behalf of the Company, and the Warrant Agent is willing so to act, in connection with the issuance, registration, transfer, exchange, exercise and replacement of the Warrants.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

Section 1. Certain Definitions. For purposes of this Agreement, the following terms have the meanings indicated:

(a) "Affiliate" has the meaning ascribed to it in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(b) "Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which the Nasdaq Stock Market is authorized or required by law or other governmental action to close.

(c) "Close of Business" on any given date means 5:00 p.m., New York City time, on such date; provided, however, that if such date is not a Business Day it means 5:00 p.m., New York City time, on the next succeeding Business Day.

(e) "Person" means an individual, corporation, association, partnership, limited liability company, joint venture, trust, unincorporated organization, government or political subdivision thereof or governmental agency or other entity.

(f) "Class A Warrants" means Class A Common Stock purchase warrants of the Company with a term of exercise of five (5) years following the Initial Exercise Date.

(g) "Class B Warrants" means Class B Common Stock purchase warrants of the Company with a term of exercise of five (5) years following the Initial Exercise Date.

(h) "Class A Warrant Certificate" means a certificate in substantially the form attached as Exhibit 1-A hereto, representing such number of Warrant Shares (as defined below) as is indicated therein, provided that any reference to the delivery of a Class A Warrant Certificate in this Agreement shall include delivery of notice from the Depositary or a Participant (each as defined below) of the transfer or exercise of Class A Warrant in the form of a Class A Global Warrant (as defined below).

(i) "Class B Warrant Certificate" means a certificate in substantially the form attached as Exhibit 1-B hereto, representing such number of Warrant Shares as is indicated therein, provided that any reference to the delivery of a Class B Warrant Certificate in this Agreement shall include delivery of notice from the Depositary or a Participant (each as defined below) of the transfer or exercise of Class B Warrant in the form of a Class B Global Warrant (as defined below).

(j) "Warrant Certificates" means, collectively, the Class A Warrant Certificate and the Class B Warrant Certificate and, each, a "Warrant Certificate".

(k) "Warrant Shares" means the shares of Common Stock underlying the Warrants and issuable upon exercise of the Warrants.

(l) "Warrants" means, collectively, the Class A Warrants and the Class B Warrants and, each, a "Warrant".

All other capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Warrant Certificates.

Section 2. Appointment of Warrant Agent. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the express terms or conditions hereof (and no implied terms and conditions) and the general practices of Continental Stock Transfer & Trust Company, and the Warrant Agent hereby accepts such appointment. The Company may from time to time appoint such Co-Warrant Agents as it may, in its sole discretion, deem necessary or desirable upon ten (10) calendar days' prior written notice to the Warrant Agent. The Warrant Agent shall have no duty to supervise, and shall in no event be liable for, the acts or omissions of any such Co-Warrant Agent. In the event the Company appoints one or more co-Warrant Agents, the respective duties of the Warrant Agent and any Co-Warrant Agent shall be as the Company shall reasonably determine, provided that such duties and determination are consistent with the terms and provisions of this Agreement.

Section 3. Global Warrants.

(a) The Class A Warrants and the Class B Warrants, respectively, shall be issuable in book entry form (the "Class A Global Warrant" and the "Class B Global Warrant", respectively, and, collectively, the "Global Warrants" and, each, a "Global Warrant"). All of the Class A Warrants and the Class B Warrants, respectively, shall initially be represented by one or more Class A Global Warrants and Class B Global Warrants, respectively, deposited with the Warrant Agent and registered in the name of Cede & Co., a nominee of The Depository Trust Company (the "Depositary"), or as otherwise directed by the Depositary. Ownership of beneficial interests in the Class A Warrants and the Class B Warrants, respectively, shall be shown on, and the transfer of such ownership shall be effected through, records maintained by (i) the Depositary or its nominee for each Global Warrant or (ii) institutions that have accounts with the Depositary (such institution, with respect to a Warrant in its account, a "Participant").

(b) If the Depositary subsequently ceases to make its book-entry settlement system available for the Warrants, the Company may instruct the Warrant Agent regarding other arrangements for book-entry settlement. In the event that the Warrants are not eligible for, or it is no longer necessary to have the Warrants available in, book-entry form, the Warrant Agent shall provide written instructions to the Depositary to deliver to the Warrant Agent for cancellation each Global Warrant, and the Company shall instruct the Warrant Agent in writing to deliver to each Holder a Warrant Certificate.

(c) A Holder has the right to elect at any time or from time to time a Warrant Exchange (as defined below) pursuant to a Warrant Certificate Request Notice (as defined below). Upon written notice by a Holder to the Warrant Agent for the exchange of some or all of such Holder's Global Warrants for a Class A Warrant Certificate or a Class B Warrant Certificate, as applicable, evidencing the same number of Warrants, which request shall be in the form attached hereto as Annex A (a "Warrant Certificate Request Notice" and the date of delivery of such Warrant Certificate Request Notice by the Holder, the "Warrant Certificate Request Notice Date" and the deemed surrender upon delivery by the Holder of a number of Global Warrants for the same number of Warrants evidenced by a Warrant Certificate, a "Warrant Exchange"), the Warrant Agent shall promptly effect the Warrant Exchange and shall promptly issue and deliver, at the expense of the Company, to the Holder a Class A Warrant Certificate or a Class B Warrant Certificate, as applicable, for such number of Warrants in the name set forth in the Warrant Certificate Request Notice. Such Class A Warrant Certificate or a Class B Warrant Certificate, as applicable, shall be dated the original issue date of the Warrants, shall be executed by manual signature by an authorized signatory of the Company, shall be in the form attached hereto as Exhibit 1-A or Exhibit 1-B, respectively. In connection with a Warrant Exchange, the Company agrees to deliver, or to direct the Warrant Agent to deliver, the Class A Warrant Certificate or a Class B Warrant Certificate, as applicable, to the Holder within three (3) Business Days of the Warrant Certificate Request Notice pursuant to the delivery instructions in the Warrant Certificate Request Notice ("Warrant Certificate Delivery Date"). Notwithstanding anything herein to the contrary, the Company shall act as warrant agent with respect to any physical Class A Warrant Certificate or Class B Warrant Certificate issued pursuant to this section. If the Company fails for any reason to deliver to the Holder the Class A Warrant Certificate or the Class B Warrant Certificate subject to the Warrant Certificate Request Notice by the Warrant Certificate Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each $1,000 of Warrant Shares evidenced by such Class A Warrant Certificate or Class B Warrant Certificate (based on the VWAP (as defined in the Warrants) of the Common Stock on the Warrant Certificate Request Notice Date), $10 per Business Day for each Business Day after such Warrant Certificate Delivery Date until such Class A Warrant Certificate or Class B Warrant Certificate, as applicable, is delivered or, prior to delivery of such Class A Warrant Certificate or Class B Warrant Certificate, the Holder rescinds such Warrant Exchange. In no event shall the Warrant Agent be liable for the Company's failure to deliver the Class A Warrant Certificate or the Class B Warrant Certificate by the Warrant Certificate Delivery Date. The Company covenants and agrees that, upon the date of delivery of the Warrant Certificate Request Notice, the Holder shall be deemed to be the holder of the Class A Warrant Certificate or Class B Warrant Certificate, as applicable, and, notwithstanding anything to the contrary set forth herein, the Class A Warrant Certificate or Class B Warrant Certificate shall be deemed for all purposes to contain all of the terms and conditions of the Class A Warrants or Class B Warrants, as applicable, evidenced by such Class A Warrant Certificate or Class B Warrant Certificate, as applicable, and the terms of this Agreement, other than Sections 3(c) and 9 herein, shall not apply to the Warrants evidenced by the Class A Warrant Certificate or the Class B Warrant Certificate, as applicable. For purposes of clarity, the Company and the Warrant Agent acknowledge and agree that, with respect to the terms of the Warrants, the Warrant Certificate or Global Warrant shall set forth the terms of the Warrants and, in the event of any conflict between the Warrant Certificate or the Global Warrant and this Agreement, the Warrant Certificate or the Global Warrants, as the case may be, shall control. For purposes of Regulation SHO, a holder whose interest in this Warrant is a beneficial interest in certificate(s) representing this Warrant held in book-entry form through DTC shall be deemed to have exercised its interest in this Warrant upon instructing its broker that is a DTC participant to exercise its interest in this Warrant, except that, if the date of exercise is a date when the stock transfer books of the Company are closed, such person shall be deemed to have become the holder of such shares at the open of business on the next succeeding date on which the stock transfer books are open.

Section 4. Form of Warrant Certificates. The Class A Warrant Certificate, together with the form of election to purchase Common Stock ("Exercise Notice") and the form of assignment to be printed on the reverse thereof, shall be in the form of Exhibit 1-A hereto and the Class B Warrant Certificate, together with the form of Exercise Notice and the form of assignment to be printed on the reverse thereof, shall be in the form of Exhibit 1-B hereto.

Section 5. Countersignature and Registration. The Warrant Certificates shall be executed on behalf of the Company by its Chief Executive Officer, Chief Financial Officer or Vice President, either manually or by facsimile signature, and have affixed thereto the Company's seal or a facsimile thereof which shall be attested by the Secretary or an Assistant Secretary of the Company, either manually or by facsimile signature. The Warrant Certificates shall be countersigned by the Warrant Agent by either manually or by facsimile signature and shall not be valid for any purpose unless so countersigned. In case any officer of the Company who shall have signed any of the Warrant Certificates shall cease to be such officer of the Company before countersignature by the Warrant Agent and issuance and delivery by the Company, such Warrant Certificates, nevertheless, may be countersigned by the Warrant Agent, issued and delivered with the same force and effect as though the person who signed such Warrant Certificate had not ceased to be such officer of the Company; and any Warrant Certificate may be signed on behalf of the Company by any person who, at the actual date of the execution of such Warrant Certificate, shall be a proper officer of the Company to sign such Warrant Certificate, although at the date of the execution of this Agreement any such person was not such an officer.

The Warrant Agent will keep or cause to be kept, at its office designated for such purposes, books for registration and transfer of the Warrant Certificates issued hereunder. Such books shall show the names and addresses of the respective Holders of the Warrant Certificates, the number of warrants evidenced on the face of each of such Warrant Certificate and the date of each of such Warrant Certificate. The Warrant Agent will create a special account for the issuance of Warrant Certificates.

Section 6. Transfer, Split Up, Combination and Exchange of Warrant Certificates; Mutilated, Destroyed, Lost or Stolen Warrant Certificates. With respect to the Class A Global Warrant and the Class B Global Warrant, respectively, subject to the provisions of the Class A Warrant Certificate and the Class B Warrant Certificate, respectively, and the last sentence of this first paragraph of Section 6 and subject to applicable law, rules or regulations, or any "stop transfer" instructions the Company may give to the Warrant Agent, at any time after the closing date of the Offering, and at or prior to the Close of Business on the Termination Date (as such term is defined in the Warrant Certificate), any Warrant Certificate or Warrant Certificates or Global Warrant or Global Warrants may be transferred, split up, combined or exchanged for another Warrant Certificate or Warrant Certificates or Global Warrant or Global Warrants, entitling the Holder to purchase a like number of shares of Common Stock as the Warrant Certificate or Warrant Certificates or Global Warrant or Global Warrants surrendered then entitled such Holder to purchase. Any Holder desiring to transfer, split up, combine or exchange any Warrant Certificate or Global Warrant shall make such request in writing delivered to the Warrant Agent, and shall surrender the Warrant Certificate or Warrant Certificates, together with the required form of assignment and certificate duly executed and properly completed and such other documentation as the Warrant Agent may reasonably request, to be transferred, split up, combined or exchanged at the office of the Warrant Agent designated for such purpose, provided that no such surrender is applicable to the Holder of a Global Warrant. Any requested transfer of Warrants, whether in book-entry form or certificate form, shall be accompanied by evidence of authority of the party making such request that may be reasonably required by the Warrant Agent. Thereupon the Warrant Agent shall, subject to the last sentence of this first paragraph of Section 6, countersign and deliver to the Person entitled thereto a Warrant Certificate or Warrant Certificates, as the case may be, as so requested. The Company may require payment from the Holder of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Warrant Certificates. The Warrant Agent shall not have any duty or obligation to take any action under any section of this Agreement that requires the payment of taxes and/or charges unless and until it is satisfied that all such payments have been made.

Upon receipt by the Warrant Agent of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of a Warrant Certificate, which evidence shall include an affidavit of loss, or in the case of mutilated certificates, the certificate or portion thereof remaining, and, in case of loss, theft or destruction, of indemnity or security reasonably acceptable to the Company and the Warrant Agent, and satisfaction of any other reasonable requirements established by Section 8-405 of the Uniform Commercial Code as in effect in the State of Delaware, and reimbursement to the Company and the Warrant Agent of all reasonable expenses incidental thereto, and upon surrender to the Warrant Agent and cancellation of the Warrant Certificate if mutilated, the Company will make and deliver a new Warrant Certificate of like tenor to the Warrant Agent for delivery to the Holder in lieu of the Warrant Certificate so lost, stolen, destroyed or mutilated.

Section 7. Exercise of Warrants; Exercise Price; Termination Date.

(a) The Class A Warrants and the Class B Warrants shall be exercisable commencing on the Initial Exercise Date (as such term is defined in the Class A Warrant Certificate and the Class B Warrant Certificate, respectively). The Class A Warrants and the Class B Warrants shall cease to be exercisable and shall terminate and become void, and all rights thereunder and under this Agreement shall cease, at or prior to the Close of Business on the Termination Date (as such term is defined in the Class A Warrant Certificate and the Class B Warrant Certificate, respectively). Subject to the foregoing and to Section 7(b) below, the Holder of a Class A Warrant or a Class B Warrant, as applicable, may exercise the Class A Warrant and the Class B Warrant, as applicable, in whole or in part upon surrender of the Class A Warrant Certificate or the Class B Warrant Certificate, as applicable, if required, with the properly completed and duly executed Exercise Notice and payment of the Exercise Price (unless exercised via a cashless exercise), which may be made, at the option of the Holder, by wire transfer or by certified or official bank check in United States dollars, to the Warrant Agent at the office of the Warrant Agent designated for such purposes. In the case of the Holder of a Global Warrant, the Holder shall deliver the duly executed Exercise Notice and the payment of the Exercise Price as described herein. Notwithstanding any other provision in this Agreement, a holder whose interest in a Global Warrant is a beneficial interest in a Global Warrant held in book-entry form through the Depositary (or another established clearing corporation performing similar functions), shall effect exercises by delivering to the Depositary (or such other clearing corporation, as applicable) the appropriate instruction form for exercise, complying with the procedures to effect exercise that are required by the Depositary (or such other clearing corporation, as applicable). The Company acknowledges that the bank accounts maintained by the Warrant Agent in connection with the services provided under this Agreement will be in its name and that the Warrant Agent may receive investment earnings in connection with the investment at Warrant Agent risk and for its benefit of funds held in those accounts from time to time. Neither the Company nor the Holders will receive interest on any deposits or Exercise Price. No ink-original Exercise Notice shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Exercise Notice be required.

(b) Upon receipt of an Exercise Notice for a Cashless Exercise, the Warrant Agent shall deliver a copy of the Exercise Notice to the Company and request from the Company and the Company shall promptly calculate and transmit to the Warrant Agent in writing the number of Warrant Shares issuable in connection with such Cashless Exercise. The Warrant Agent shall have no obligation under this Agreement to calculate, the number of Warrant Shares issuable in connection with a Cashless Exercise nor shall the Warrant agent have any duty or obligation to investigate or confirm whether the Company's determination of the number of Warrant Shares issuable upon such exercise, pursuant to this Section 7, is accurate or correct.

(c) Upon the Warrant Agent's receipt of a Class A Warrant Certificate or a Class B Warrant Certificate, as applicable, at or prior to the Close of Business on the Termination Date set forth in such Class A Warrant Certificate or Class B Warrant Certificate, as applicable, with the executed Exercise Notice and payment of the Exercise Price for the shares to be purchased (other than in the case of a Cashless Exercise) and an amount equal to any applicable tax, or governmental charge referred to in Section 6 by wire transfer, or by certified check or bank draft payable to the order of the Company (or, in the case of the Holder of a Global Warrant, the delivery of the executed Exercise Notice and the payment of the Exercise Price (other than in the case of a Cashless Exercise) and any other applicable amounts as set forth herein), the Warrant Agent shall cause the Warrant Shares underlying such Class A Warrant Certificate or Class B Warrant Certificate, as applicable, or Class A Global Warrant or Class B Global Warrant, as applicable, to be delivered to or upon the order of the Holder of such Class A Warrant Certificate or Class B Warrant Certificate, as applicable, or Class A Global Warrant or Class B Global Warrant, as applicable, registered in such name or names as may be designated by such Holder, no later than the Warrant Share Delivery Date (as such term is defined in the Class A Warrant Certificate or Class B Warrant Certificate, as applicable). If the Company is then a participant in the DWAC system of the Depositary and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) the Warrant is being exercised via Cashless Exercise, then the certificates for Warrant Shares shall be transmitted by the Warrant Agent to the Holder by crediting the account of the Holder's broker with the Depositary through its DWAC system. For the avoidance of doubt, if the Company becomes obligated to pay any amounts to any Holders pursuant to Section 2(d)(i) or 2(d)(iv) of the Class A Warrant Certificate or Class B Warrant Certificate, as applicable, such obligation shall be solely that of the Company and not that of the Warrant Agent. Notwithstanding anything else to the contrary in this Agreement, except in the case of a Cashless Exercise, if any Holder fails to duly deliver payment to the Warrant Agent of an amount equal to the aggregate Exercise Price of the Warrant Shares to be purchased upon exercise of such Holder's Warrant as set forth in Section 7(a) hereof by the Warrant Share Delivery Date, the Warrant Agent will not obligated to deliver such Warrant Shares (via DWAC or otherwise) until following receipt of such payment, and the applicable Warrant Share Delivery Date shall be deemed extended by one day for each day (or part thereof) until such payment is delivered to the Warrant Agent.

(d) The Warrant Agent shall deposit all funds received by it in payment of the Exercise Price for all Warrants in the account of the Company maintained with the Warrant Agent for such purpose (or to such other account as directed by the Company in writing) and shall advise the Company via email at the end of each day on which exercise notices are received or funds for the exercise of any Warrant are received of the amount so deposited to its account.

(e) In case the Holder of any Warrant Certificate shall exercise fewer than all Warrants evidenced thereby, upon the request of the Holder, a new Warrant Certificate evidencing the number of Warrants equivalent to the number of Warrants remaining unexercised may be issued by the Warrant Agent to the Holder of such Warrant Certificate or to his duly authorized assigns in accordance with Section 2(d)(ii) of the Warrant Certificate, subject to the provisions of Section 6 hereof.

Section 8. Cancellation and Destruction of Warrant Certificates. All Warrant Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or to any of its agents, be delivered to the Warrant Agent for cancellation or in canceled form, or, if surrendered to the Warrant Agent, shall be canceled by it, and no Warrant Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Warrant Agent for cancellation and retirement, and the Warrant Agent shall so cancel and retire, any other Warrant Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Warrant Agent shall deliver all canceled Warrant Certificates to the Company, or shall, at the written request of the Company, destroy such canceled Warrant Certificates, and in such case shall deliver a certificate of destruction thereof to the Company, subject to any applicable law, rule or regulation requiring the Warrant Agent to retain such canceled certificates.

Section 9. Certain Representations; Reservation and Availability of Shares of Common Stock or Cash.

(a) This Agreement has been duly authorized, executed and delivered by the Company and, assuming due authorization, execution and delivery hereof by the Warrant Agent, constitutes a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, and the Warrants have been duly authorized, executed and issued by the Company and, assuming due execution thereof by the Warrant Agent pursuant hereto and payment therefor by the Holders as provided in the Registration Statement, constitute valid and legally binding obligations of the Company enforceable against the Company in accordance with their terms and entitled to the benefits hereof; in each case except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally or by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(b) As of the date hereof, the authorized capital stock of the Company consists of (i) 30,000,000 shares of Common Stock, of which _____ shares of Common Stock are issued and outstanding, and 4,140,000 shares of Common Stock are reserved for issuance upon exercise of the Warrants, and (ii) 5,000,000 shares of preferred stock, of which 4,500 shares are issued and outstanding, and 4,500,000 shares of Common Stock are reserved for issuance upon conversion of the Preferred Stock. Except as disclosed in the Registration Statement, there are no other outstanding obligations, warrants, options or other rights to subscribe for or purchase from the Company any class of capital stock of the Company.

(c) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued shares of Common Stock or its authorized and issued shares of Common Stock held in its treasury, free from preemptive rights, the number of shares of Common Stock that will be sufficient to permit the exercise in full of all outstanding Warrants.

(d) The Warrant Agent will create a special account for the issuance of Common Stock upon the exercise of Warrants.

(e) The Company further covenants and agrees that it will pay when due and payable any and all federal and state transfer taxes and charges which may be payable in respect of the original issuance or delivery of the Warrant Certificates or certificates evidencing Common Stock upon exercise of the Warrants. The Company shall not, however, be required to pay any tax or governmental charge which may be payable in respect of any transfer involved in the transfer or delivery of Warrant Certificates or the issuance or delivery of certificates for Common Stock in a name other than that of the Holder of the Warrant Certificate evidencing Warrants surrendered for exercise or to issue or deliver any certificate for shares of Common Stock upon the exercise of any Warrants until any such tax or governmental charge shall have been paid (any such tax or governmental charge being payable by the Holder of such Warrant Certificate at the time of surrender) or until it has been established to the Company's and the Warrant Agent's reasonable satisfaction that no such tax or governmental charge is due.

Section 10. Common Stock Record Date. Each Person in whose name any certificate for shares of Common Stock is issued (or to whose broker's account is credited shares of Common Stock through the DWAC system) upon the exercise of Warrants shall for all purposes be deemed to have become the holder of record for the Common Stock represented thereby on, and such certificate shall be dated, the date on which submission of the Exercise Notice was made, provided that the Warrant Certificate evidencing such Warrant was duly surrendered (but only if required herein) and payment of the Exercise Price (and any applicable transfer taxes) was received on or prior to the Warrant Share Delivery Date; provided, however, that, if the date of submission of the Exercise Notice is a date upon which the Common Stock transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares on, and such certificate shall be dated, the next succeeding day on which the Common Stock transfer books of the Company are open.

Section 11. Adjustment of Exercise Price, Number of Shares of Common Stock or Number of the Company Warrants. The Exercise Price, the number of shares covered by each Warrant and the number of Warrants outstanding are subject to adjustment from time to time as provided in Section 3 of the Class A Warrant Certificate or the Class B Warrant Certificate, as applicable. In the event that at any time, as a result of an adjustment made pursuant to Section 3 of the Class A Warrant Certificate or the Class B Warrant Certificate, as applicable, the Holder of any Warrant thereafter exercised shall become entitled to receive any shares of capital stock of the Company other than shares of Common Stock, thereafter the number of such other shares so receivable upon exercise of any Warrant shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the shares contained in Section 3 of the Warrant Certificate, and the provisions of Sections 7, 9 and 13 of this Agreement with respect to the shares of Common Stock shall apply on like terms to any such other shares. All Warrants originally issued by the Company subsequent to any adjustment made to the Exercise Price pursuant to the Class A Warrant Certificate or the Class B Warrant Certificate, as applicable, shall evidence the right to purchase, at the adjusted Exercise Price, the number of shares of Common Stock purchasable from time to time hereunder upon exercise of the Warrants, all subject to further adjustment as provided herein.

Section 12. Certification of Adjusted Exercise Price or Number of Shares of Common Stock. Whenever the Exercise Price or the number of shares of Common Stock issuable upon the exercise of each Class A Warrant Certificate or the Class B Warrant Certificate, as applicable, is adjusted as provided in Section 11 or 13, the Company shall (a) promptly prepare a certificate setting forth the Exercise Price of each Class A Warrant Certificate or the Class B Warrant Certificate, as applicable, as so adjusted, and a brief, reasonably detailed statement of the facts accounting for such adjustment, (b) promptly file with the Warrant Agent and with each transfer agent for the Common Stock a copy of such certificate and (c) instruct the Warrant Agent, at the Company's expense, to send a brief summary thereof to each Holder of a Class A Warrant Certificate or the Class B Warrant Certificate, as applicable. The Warrant Agent shall be fully protected in relying on such certificate and on any adjustment or statement therein contained and shall have no duty or liability with respect to, and shall not be deemed to have knowledge of any such adjustment or any such event unless and until it shall have received such certificate.

Section 13. Fractional Shares of Common Stock.

(a) The Company shall not issue fractions of Warrants or distribute Warrant Certificates which evidence fractional Warrants. Whenever any fractional Warrant would otherwise be required to be issued or distributed, the actual issuance or distribution shall reflect a rounding of such fraction to the nearest whole Warrant (rounded down).

(b) The Company shall not issue fractions of shares of Common Stock upon exercise of Warrants or distribute stock certificates which evidence fractional shares of Common Stock. Whenever any fraction of a share of Common Stock would otherwise be required to be issued or distributed, the actual issuance or distribution in respect thereof shall be made in accordance with Section 2(d)(v) of the Warrant Certificate.

Section 14. Concerning the Warrant Agent.

(a) The Company agrees to pay to the Warrant Agent, pursuant to the fee schedule mutually agreed upon by the parties hereto and provided separately on the date hereof, for all services rendered by it hereunder and, from time to time, its reasonable expenses and counsel fees and other disbursements incurred in the preparation, delivery, negotiation, amendment, administration and execution of this Agreement and the exercise and performance of its duties hereunder.

(b) The Company covenants and agrees to indemnify and to hold the Warrant Agent harmless against any costs, expenses (including reasonable fees and expenses of its legal counsel), losses or damages, which may be paid, incurred or suffered by or to which it may become subject, arising from or out of, directly or indirectly, any claims or liability resulting from its actions or omissions as Warrant Agent pursuant hereto; provided, that such covenant and agreement does not extend to, and the Warrant Agent shall not be indemnified with respect to, such costs, expenses, losses and damages incurred or suffered by the Warrant Agent as a result of, or arising out of, its gross negligence, bad faith, or willful misconduct (each as determined by a final non-appealable court of competent jurisdiction). Notwithstanding anything in this Agreement to the contrary, any liability of the Warrant Agent under this Agreement will be limited to the amount of annual fees paid by the Company to the Warrant Agent during the twelve (12) months immediately preceding the event for which recovery from the Warrant Agent is being sought. The reasonable costs and expenses incurred by the Warrant Agent in enforcing this right of indemnification shall be paid by the Company.

(c) Upon the assertion of a claim for which the Company may be required to indemnify the Warrant Agent, the Warrant Agent shall promptly notify the Company in writing of such assertion, and shall keep the other party reasonably advised with respect to material developments concerning such claim. However, failure to give such notice shall not affect the Warrant Agent's right to and the Company's obligations for indemnification hereunder.

(d) Neither party to this Agreement shall be liable to the other party for any consequential, indirect, punitive, special or incidental damages under any provisions of this Agreement or for any consequential, indirect, punitive, special or incidental damages arising out of any act or failure to act hereunder even if that party has been advised of or has foreseen the possibility of such damages.

(e) Notwithstanding anything contained herein to the contrary, the rights and obligations of the parties set forth in this Section 14 shall survive termination of this Agreement, the expiration of the Warrants or the resignation, removal or replacement of the Warrant Agent.

Section 15. Purchase or Consolidation or Change of Name of Warrant Agent. Any Person into which the Warrant Agent or any successor Warrant Agent may be merged or with which it may be consolidated, or any Person resulting from any merger or consolidation to which the Warrant Agent or any successor Warrant Agent shall be party, or any Person succeeding to the stock transfer or other shareholder services business of the Warrant Agent or any successor Warrant Agent, shall be the successor to the Warrant Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that such Person would be eligible for appointment as a successor Warrant Agent under the provisions of Section 17. In case at the time such successor Warrant Agent shall succeed to the agency created by this Agreement any of the Warrant Certificates shall have been countersigned but not delivered, any such successor Warrant Agent may adopt the countersignature of the predecessor Warrant Agent and deliver such Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, any successor Warrant Agent may countersign such Warrant Certificates either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

In case at any time the name of the Warrant Agent shall be changed and at such time any of the Warrant Certificates shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignature under its prior name and deliver Warrant Certificates so countersigned; and in case at that time any of the Warrant Certificates shall not have been countersigned, the Warrant Agent may countersign such Warrant Certificates either in its prior name or in its changed name; and in all such cases such Warrant Certificates shall have the full force provided in the Warrant Certificates and in this Agreement.

Section 16. Duties of Warrant Agent. The Warrant Agent undertakes the duties and obligations imposed by this Agreement upon the following express terms and conditions (and no implied terms and conditions), by all of which the Company, by its acceptance hereof, shall be bound and shall not assume any obligations or relationship of agency or trust with any of the Holders of the Warrants or any other Person:

(a) The Warrant Agent may consult with legal counsel selected by it (who may be legal counsel for the Company), and the opinion and advice of such counsel shall be full and complete authorization and protection to the Warrant Agent as to any action taken or omitted by it in accordance with such opinion or advice.

(b) Whenever in the performance of its duties under this Agreement the Warrant Agent shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the Chief Executive Officer, Chief Financial Officer or Vice President of the Company; and such certificate shall be full authorization and protection to the Warrant Agent and the Warrant Agent shall incur no liability for or in respect of any action taken, suffered or omitted to be taken by it under the provisions of this Agreement in reliance upon such certificate. The Warrant Agent shall have no duty to act without such a certificate as set forth in this Section 16(b).

(c) Subject to the limitation set forth in Section 14, the Warrant Agent shall be liable hereunder only for its own gross negligence, bad faith or willful misconduct (each as determined in a final, non-appealable judgment of a court of competent jurisdiction).

(d) The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Warrant Certificates (including in the case of any notation in book entry form to reflect ownership), except its countersignature thereof, by the Company or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Warrant Agent shall not have any liability or be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Warrant Agent) or in respect of the validity or execution of any Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Warrant Certificate; nor shall it be responsible for the adjustment of the Exercise Price or the making of any change in the number of shares of Common Stock required under the provisions of Section 11 or 13 or responsible for the manner, method or amount of any such change or adjustment or the ascertaining of the existence of facts that would require any such adjustment or change (except with respect to the exercise of Warrants evidenced by Warrant Certificates after actual notice of any adjustment of the Exercise Price); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock to be issued pursuant to this Agreement or any Warrant Certificate or as to whether any shares of Common Stock will, when issued, be duly authorized, validly issued, fully paid and nonassessable.

(f) Each party hereto agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the other party hereto for the carrying out or performing by any party of the provisions of this Agreement.

(g) The Warrant Agent is hereby authorized to accept instructions with respect to the performance of its duties hereunder from the Chief Executive Officer, Chief Financial Officer or Vice President of the Company, and to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable and shall be indemnified and held harmless for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer, provided Warrant Agent carries out such instructions without gross negligence, bad faith or willful misconduct.

(h) The Warrant Agent and any shareholder, director, officer or employee of the Warrant Agent may buy, sell or deal in any of the Warrants or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Warrant Agent under this Agreement. Nothing herein shall preclude the Warrant Agent from acting in any other capacity for the Company or for any other Person.

(i) The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorney or agents, and the Warrant Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorney or agents or for any loss to the Company resulting from any such act, default, neglect or misconduct, absent gross negligence or bad faith in the selection and continued employment thereof (which gross negligence and bad faith must be determined by a final, non-appealable judgment of a court of competent jurisdiction).

(j) The Warrant Agent shall not be obligated to expend or risk its own funds or to take any action that it believes would expose or subject it to expense or liability or to a risk of incurring expense or liability, unless it has been furnished with assurances of repayment or indemnity satisfactory to it.

(k) The Warrant Agent shall not be liable or responsible for any failure of the Company to comply with any of its obligations relating to any registration statement filed with the Securities and Exchange Commission or this Agreement, including without limitation obligations under applicable regulation or law.

(l) The Warrant Agent may rely on and be fully authorized and protected in acting or failing to act upon (a) any guaranty of signature by an "eligible guarantor institution" that is a member or participant in the Securities Transfer Agents Medallion Program or other comparable "signature guarantee program" or insurance program in addition to, or in substitution for, the foregoing; or (b) any law, act, regulation or any interpretation of the same even though such law, act, or regulation may thereafter have been altered, changed, amended or repealed.

(m) In the event the Warrant Agent believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Warrant Agent hereunder, the Warrant Agent, may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Company, the holder of any Warrant or any other Person for refraining from taking such action, unless the Warrant Agent receives written instructions signed by the Company which eliminates such ambiguity or uncertainty to the satisfaction of Warrant Agent.

This Section 16 shall survive the expiration of the Warrants, the termination of this Agreement and the resignation, replacement or removal of the Warrant Agent. The costs and expenses incurred in enforcing this right of indemnification shall be paid by the Company.

Section 17. Change of Warrant Agent. The Warrant Agent may resign and be discharged from its duties under this Agreement upon 30 days' notice in writing sent to the Company and, in the event that the Warrant Agent or one of its affiliates is not also the transfer agent for the Company, to each transfer agent of the Common Stock. In the event the transfer agency relationship in effect between the Company and the Warrant Agent terminates, the Warrant Agent will be deemed to have resigned automatically and be discharged from its duties under this Agreement as of the effective date of such termination, and the Company shall be responsible for sending any required notice thereunder. The Company may remove the Warrant Agent or any successor Warrant Agent upon 30 days' notice in writing, sent to the Warrant Agent or successor Warrant Agent, as the case may be, and to each transfer agent of the Common Stock, and to the Holders of the Warrant Certificates. If the Warrant Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Warrant Agent. If the Company shall fail to make such appointment within a period of 30 days after such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Warrant Agent or by the Holder of a Warrant Certificate (who shall, with such notice, submit his Warrant Certificate for inspection by the Company), then the Holder of any Warrant Certificate may apply to any court of competent jurisdiction for the appointment of a new Warrant Agent, provided that, for purposes of this Agreement, the Company shall be deemed to be the Warrant Agent until a new warrant agent is appointed. Any successor Warrant Agent, whether appointed by the Company or by such a court, shall be a Person, other than a natural person, organized and doing business under the laws of the United States or of a state thereof, in good standing, which is authorized under such laws to exercise stock transfer powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Warrant Agent a combined capital and surplus of at least $50,000,000. After appointment, the successor Warrant Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Warrant Agent without further act or deed; but the predecessor Warrant Agent shall deliver and transfer to the successor Warrant Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose but such predecessor Warrant Agent shall not be required to make any additional expenditure (without prompt reimbursement by the Company) or assume any additional liability in connection with the foregoing. Not later than the effective date of any such appointment, the Company shall file notice thereof in writing with the predecessor Warrant Agent and each transfer agent of the Common Stock, and mail a notice thereof in writing to the Holders of the Warrant Certificates. However, failure to give any notice provided for in this Section 17, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Warrant Agent or the appointment of the successor Warrant Agent, as the case may be.

Section 18. Issuance of New Warrant Certificates. Notwithstanding any of the provisions of this Agreement or of the Warrants to the contrary, the Company may, at its option, issue new Warrant Certificates evidencing Warrants in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Exercise Price per share and the number or kind or class of shares of stock or other securities or property purchasable under the several Warrant Certificates made in accordance with the provisions of this Agreement.

Section 19. Notices. Notices or demands authorized by this Agreement to be given or made (i) by the Warrant Agent or by the Holder of any Warrant Certificate to or on the Company, (ii) by the Company or by the Holder of any Warrant Certificate to or on the Warrant Agent or (iii) by the Company or the Warrant Agent to the Holder of any Warrant Certificate, shall be deemed given when in writing (a) on the date delivered, if delivered personally, (b) on the first Business Day following the deposit thereof with Federal Express or another recognized overnight courier, if sent by Federal Express or another recognized overnight courier, (c) on the fourth Business Day following the mailing thereof with postage prepaid, if mailed by registered or certified mail (return receipt requested), and (d) the date of transmission, if such notice or communication is delivered via facsimile or e-mail attachment at or prior to 5:30 p.m. (New York City time) on a Business Day and (e) the next Business Day after the date of transmission, if such notice or communication is delivered via facsimile or e-mail attachment on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day, in each case to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to the Company, to:

Bluejay Diagnostics, Inc.
360 Massachusetts Avenue, Suite 203
Acton, MA 01720
Attn: Chief Financial Officer

With a copy (which shall not constitute notice) to:

Schiff Hardin, LLP
901 K Street, NW Suite 700
Washington, DC 20001
Attn: Ralph De Martino

(b) If to the Warrant Agent, to:

Continental Stock Transfer & Trust Company
1 State Street, 30th Floor
New York, New York 10004
Attn: Compliance Department

For any notice delivered by email to be deemed given or made, such notice must be followed by notice sent by overnight courier service to be delivered on the next Business Day following such email, unless the recipient of such email has acknowledged via return email receipt of such email.

(c) If to the Holder of any Warrant Certificate, to the address of such Holder as shown on the registry books of the Company. Any notice required to be delivered by the Company to the Holder of any Warrant may be given by the Warrant Agent on behalf of the Company. Notwithstanding any other provision of this Agreement, where this Agreement provides for notice of any event to a Holder of any Warrant, such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the procedures of the Depositary or its designee.

Section 20. Supplements and Amendments.

(a) The Company and the Warrant Agent may from time to time supplement or amend this Agreement without the approval of any Holders of Global Warrants in order to (i) add to the covenants and agreements of the Company for the benefit of the Holders of the Global Warrants, (ii) to surrender any rights or power reserved to or conferred upon the Company in this Agreement, (iii) to cure any ambiguity, (iv) to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein, or (v) to make any other provisions with regard to matters or questions arising hereunder which the Company and the Warrant Agent may deem necessary or desirable, provided that such addition, correction or surrender shall not adversely affect the interests of the Holders of the Global Warrants or Warrant Certificates in any material respect.

(b) In addition to the foregoing, with the consent of Holders of Warrants entitled, upon exercise thereof, to receive not less than a majority of the shares of Common Stock issuable thereunder, the Company and the Warrant Agent may modify this Agreement for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or modifying in any manner the rights of the Holders of the Global Warrants; provided, however, that no modification of the terms (including but not limited to the adjustments described in Section 11) upon which the Warrants are exercisable or reducing the percentage required for consent to modification of this Agreement may be made without the consent of the Holder of each outstanding warrant certificate affected thereby; provided further, however, that no amendment hereunder shall affect any terms of any Warrant Certificate issued in a Warrant Exchange. As a condition precedent to the Warrant Agent's execution of any amendment, the Company shall deliver to the Warrant Agent a certificate from a duly authorized officer of the Company that states that the proposed amendment complies with the terms of this Section 20. No supplement or amendment to this Agreement shall be effective unless duly executed by the Warrant Agent.

Section 21. Successors. All covenants and provisions of this Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

Section 22. Benefits of this Agreement. Nothing in this Agreement shall be construed to give any Person other than the Company, the Holders of Warrant Certificates and the Warrant Agent any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Warrant Agent and the Holders of the Warrant Certificates.

Section 23. Governing Law; Jurisdiction. This Agreement and each Warrant Certificate issued hereunder shall be governed by, and construed in accordance with, the laws of the State of New York without giving effect to the conflicts of law principles thereof. The Company hereby agrees that any action, proceeding or claim against it arising out of or relating in any way to this Agreement shall be brought and enforced in the courts of the State of New York or the United States District Court for the Southern District of New York, and irrevocably submits to such jurisdiction, which jurisdiction shall be exclusive. The Company hereby waives any objection to such exclusive jurisdiction and that such courts represent an inconvenience forum.

Section 24. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this Agreement transmitted electronically shall have the same authority, effect and enforceability as an original signature.

Section 25. Captions. The captions of the sections of this Agreement have been inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 26. Severability. Wherever 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 to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement; provided, however, that if such prohibited and invalid provision shall adversely affect the rights, immunities, liabilities, duties or obligations of the Warrant Agent, the Warrant Agent shall be entitled to resign immediately upon written notice to the Company.

Section 27. Force Majeure. Notwithstanding anything to the contrary contained herein, the Warrant Agent will not be liable for any delays or failures in performance resulting from acts beyond its reasonable control including, without limitation, acts of God, terrorist acts, shortage of supply, breakdowns or malfunctions, interruptions or malfunction of computer facilities, or loss of data due to power failures or mechanical difficulties with information storage or retrieval systems, labor difficulties, war, or civil unrest.

Section 28. Entire Agreement. The parties hereto acknowledge that there are no agreements or understandings, written or oral, between them with respect to matters contemplated hereunder other than as set forth herein and the Warrant Certificates, that this Agreement and the Warrant Certificates contain the entire agreement between them with respect to the subject matter hereof and thereof.

Section 29. Fees; Expenses. As consideration for the services provided by Continental (the "Services"), the Company shall pay to Continental the fees set forth on Schedule 1 hereto (the "Fees"). If the Company requests that Continental provide additional services not contemplated hereby, the Company shall pay to Continental fees for such services at Continental's reasonable and customary rates, such fees to be governed by the terms of a separate agreement to be mutually agreed to and entered into by the Parties at such time (the "Additional Service Fee"; together with the Fees, the "Service Fees")

(a) The Company shall reimburse Continental for all reasonable and documented expenses incurred by Continental (including, without limitation, reasonable and documented fees and disbursements of counsel) in connection with the Services (the "Expenses"); provided, however, that Continental reserves the right to request advance payment for any reasonable and documented out-of-pocket expenses. The Company agrees to pay all Service Fees and Expenses within thirty (30) days following receipt of an invoice from Continental.

(b) The Company agrees and acknowledges that Continental may adjust the Service Fees may annually, on or about each anniversary date of this Agreement, by the annual percentage of change in the latest Consumer Price Index of All Urban Consumers United States City Average, as published by the U.S. Department of Labor, Bureau of Labor Statistics, plus three percent (3%).

(c) Upon termination of this Agreement for any reason, Continental shall assist the Company with the transfer of records of the Company held by Continental as promptly as practicable. Continental shall be entitled to reasonable additional compensation and reimbursement of any Expenses for the preparation and delivery of such records to the successor agent or to the Company, and for maintaining records and/or Stock Certificates that are received after the termination of this Agreement (the "Record Transfer Services").

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

BLUEJAY DIAGNOSTICS, INC.

By: _____
Name:
Title:

CONTINENTAL STOCK TRANSFER & TRUST COMPANY

By: _____
Name:
Title:

Annex A: Form of Warrant Certificate Request Notice

WARRANT CERTIFICATE REQUEST NOTICE

To: _____ as Warrant Agent for Bluejay Diagnostics, Inc. (the "Company")

The undersigned Holder of [Class A] [Class B] Common Stock Purchase Warrants ("Warrants") in the form of [Class A] [Class B] Global Warrants issued by the Company hereby elects to receive a Warrant Certificate evidencing the Warrants held by the Holder as specified below:

1. Name of Holder of [Class A] [Class B] Warrants in form of Global Warrants: _____

2. Name of Holder in Warrant Certificate (if different from name of Holder of Warrants in form of Global Warrants): _____

3. Number of Warrants in name of Holder in form of Global Warrants: _____

4. Number of Warrants for which Warrant Certificate shall be issued: _____

5. Number of Warrants in name of Holder in form of Global Warrants after issuance of Warrant Certificate, if any: _____

6. [Class A] [Class B] Warrant Certificate shall be delivered to the following address:

_____

_____

_____

_____

The undersigned hereby acknowledges and agrees that, in connection with this Warrant Exchange and the issuance of the Warrant Certificate, the Holder is deemed to have surrendered the number of Warrants in form of Global Warrants in the name of the Holder equal to the number of Warrants evidenced by the Warrant Certificate.

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Date: _____

Exhibit 1-A: Form of Class A Warrant Certificate

Exhibit 1-B: Form of Class B Warrant Certificate

Schedule 1

Fees

Monthly Administration Fee for Class A 5-Year Warrants and Class B 5-Year Warrants	$	
PUBLIC OFFERING SERVICES		
Public Offering Closing Fee (two Warrant issues)	$	
Assignment of Public Offering Conversion Specialist		Included
Posting of shares via DTC FRAC		Included
Coordination of working group as part of the offering		Included
Attendance at closing by telephone as requested		Included
Electronic delivery of shares at time of closing		Included
Coordination of over-allotment of shares (if closed separately)	$	
EXCHANGE OF PREFERRED SHARES AND WARRANTS INTO COMMON SHARES		
Per Exercise of Warrants (per request)	$	

SPECIAL SERVICES

Services not included herein (including, without limitation, trustee and custodial services, exchange/tender offer services and stock dividend disbursement services) but requested by the Company may be subject to additional charges.

OUT-OF-POCKET EXPENSES

All reasonable and customary out-of-pocket expenses will be billed in addition to the foregoing fees. These charges include, but are not limited to, printing and stationery, freight and materials delivery, postage and handling.

The foregoing fees apply to services ordinarily rendered by Continental and are subject to reasonable adjustment based on final review of documents.

Exhibit 5.1

October 21, 2021

BlueJay Diagnostics, Inc.
360 Massachusetts Avenue, Suite 203
Acton, MA 01720

Re: Registration Statement on Form S-1

Ladies and Gentlemen:

We have acted as counsel to BlueJay Diagnostics, Inc., a Delaware corporation (the "Company"), in connection with the Registration Statement on Form S-1 (as amended, the "Registration Statement"), filed by the Company on October 4, 2021 with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), for the proposed offering (the "Offering") of (A) $20,700,000 of units (the "Units") of securities of the Company, with each Unit consisting of (a) one share of common stock, par value $0.0001 per share, of the Company ("Common Stock") (or, to each purchaser whose purchase of shares of Common Stock in such offering would otherwise result in the purchaser, together with its affiliates and certain related parties, beneficially owning more than 4.99% of the Company's outstanding Common Stock immediately following the consummation of such offering, a share of the Company's Series E Preferred Stock (the "Preferred Stock") (and the shares of Common Stock issuable from time to time upon conversion of the Preferred Stock), in lieu of a share of Common Stock), (b) one Class A warrant to purchase one share of Common Stock (the "Series A Warrants"), and (c) one Class B warrant to purchase one share of Common Stock (the "Class B Warrants," and collectively, with the Class A Warrants, the "Warrants")); (B) $1,293,750 of underwriters' warrants to purchase shares of Common Stock (and the shares of Common Stock issuable from time to time upon exercise of the Underwriters' Warrants) (the "Underwriters' Warrants"); and (C) 4,500,000 shares of Common Stock to be offered by a certain selling stockholder (the "Selling Stockholder Shares"). Each share of Preferred Stock will be convertible into one share of Common Stock. The Common Stock, Preferred Stock, Warrants, and Underwriters' Warrants are referred to herein collectively as the "Securities." The Securities are being sold to the several underwriters named in, and pursuant to, an underwriting agreement among the Company and such underwriters ("Underwriting Agreement").

In connection with our opinion, we have examined the Registration Statement, including the exhibits thereto, the form of Underwriters' Warrant, and such other documents, corporate records and instruments, and have examined such laws and regulations, as we have deemed necessary for the purposes of this opinion. In making our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity with the originals of all documents submitted to us as copies and the legal capacity of all natural persons. As to matters of fact material to our opinions in this letter, we have relied on certificates and statements from officers and other employees of the Company, public officials and other appropriate persons.

Based on the foregoing and subject to the qualifications set forth below, we are of the opinion that:

1. The Securities have been duly authorized for issuance by all necessary corporate action by the Company.

2. The shares of Common Stock, when issued and sold as described in the Registration Statement, will be validly issued, fully paid and non-assessable.

3. The shares of Preferred Stock, if purchased in lieu of Common Stock, when issued and sold as described in the Registration Statement, will be validly issued, fully paid and non-assessable.

4. Provided that the Units, the Warrants and Underwriters' Warrants have been duly executed and delivered by the Company and duly delivered to the purchasers or underwriters, such Units, Warrants and Underwriters' Warrants, when issued as contemplated in the Registration Statement, will be valid and binding obligations of the Company.

5. The shares of Common Stock issuable pursuant to each of the Class A Warrants, Class B Warrants and Underwriter's Warrants, upon payment to the Company of the required consideration, and when issued and sold by the Company and paid for in accordance with the terms of the Class A Warrants, Class B Warrants, or Underwriters' Warrants, as applicable, and as described in the Registration Statement, will be validly issued, fully paid and non-assessable.

6. The shares of Common Stock issuable pursuant to the conversion of the Preferred Stock, and when issued by the Company in accordance with the terms of the Preferred Stock, as described in the Registration Statement, will be validly issued, fully paid and non-assessable.

7. The Selling Stockholder Shares have been duly authorized for issuance by all necessary corporate action by the Company, and are validly issued, fully paid and non-assessable.

The opinions set forth above are subject to the following qualifications:

A. The opinion expressed herein with respect to the legality, validity, binding nature and enforceability of the Units, Warrants and Underwriters' Warrant is subject to (i) applicable laws relating to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other similar laws affecting creditors' rights generally, whether now or hereafter in effect and (ii) general principles of equity, including, without limitation, concepts of materiality, laches, reasonableness, good faith and fair dealing and the principles regarding when injunctive or other equitable remedies will be available (regardless of whether considered in a proceeding at law or in equity).

B. The foregoing opinions are limited to the laws of the State of New York and the General Corporation Law of Delaware, and we express no opinion as to the laws of any other jurisdiction.

The opinions expressed in this opinion letter are as of the date of this opinion letter only and as to laws covered hereby only as they are in effect on that date, and we assume no obligation to update or supplement such opinion to reflect any facts or circumstances that may come to our attention after that date or any changes in law that may occur or become effective after that date. The opinions herein are limited to the matters expressly set forth in this opinion letter, and no opinion or representation is given or may be inferred beyond the opinions expressly set forth in this opinion letter.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement and to the use of this firm's name under the caption "Legal Matters" in the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Schiff Hardin LLP

Exhibit 10.1

BLUEJAY DIAGNOSTICS, INC.
2021 STOCK PLAN

Section 1. Establishment and Purpose.

1.1 The Board of Directors of Bluejay Diagnostics, Inc. (the "Company") hereby establishes the Bluejay Diagnostics, Inc. 2021 Stock Plan (the "Plan") effective as of July 6, 2021, subject to approval by the Company's stockholders within one year of the date hereof.

1.2 The purpose of the Plan is to attract and retain outstanding individuals as Key Employees, Directors and Consultants of the Company and its Subsidiaries, to recognize the contributions made to the Company and its Subsidiaries by Key Employees, Directors and Consultants, and to provide such Key Employees, Directors and Consultants with additional incentive to expand and improve the profits and achieve the objectives of the Company and its Subsidiaries, by providing such Key Employees, Directors and Consultants with the opportunity to acquire or increase their proprietary interest in the Company through receipt of Awards.

Section 2. Definitions.

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

2.1 "Award" means any award or benefit granted under the Plan, which shall be a Stock Option, a Stock Award, a Stock Unit Award or an SAR.

2.2 "Award Agreement" means, as applicable, a Stock Option Agreement, Stock Award Agreement, Stock Unit Award Agreement or SAR Agreement evidencing an Award granted under the Plan.

2.3 "Board" means the Board of Directors of the Company.

2.4 "Change in Control" has the meaning set forth in Section 8.2 of the Plan.

2.5 "Code" means the Internal Revenue Code of 1986, as amended from time to time.

2.6 "Committee" means the Compensation Committee of the Board or such other committee as may be designated by the Board from time to time to administer the Plan, or, if no such committee has been designated at the time of any grants, it shall mean the Board.

2.7 "Common Stock" means the Common Stock, par value $0.001 per share, of the Company.

2.8 "Company" means Bluejay Diagnostics, Inc., a Delaware corporation.

2.9 "Consultant" means any person, including an advisor, who is engaged by the Company or an affiliate to render consulting or advisory services and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will 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.

2.10 “Director” means a director of the Company who is not an employee of the Company or a Subsidiary.

2.11 “Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time.

2.12 “Fair Market Value” means as of any date, the closing price of a share of Common Stock on the national securities exchange on which the Common Stock is listed, or, if the Common Stock is not listed on a national securities exchange, the over-the-counter market on which the Common Stock trades, or, if the Common Stock is not listed on a national securities exchange or an over-the-counter market, as determined by the Board as of such date, or, if no trading occurred on such date, as of the trading day immediately preceding such date.

2.13 “Incentive Stock Option” or “ISO” means a Stock Option granted under Section 5 of the Plan that meets the requirements of Section 422(b) of the Code or any successor provision.

2.14 “Key Employee” means an employee of the Company or any Subsidiary selected to participate in the Plan in accordance with Section 3. A Key Employee may also include a person who is granted an Award (other than an Incentive Stock Option) in connection with the hiring of the person prior to the date the person becomes an employee of the Company or any Subsidiary, provided that such Award shall not vest prior to the commencement of employment.

2.15 “Non-Qualified Stock Option” or “NSO” means a Stock Option granted under Section 5 of the Plan that is not an Incentive Stock Option.

2.16 “Participant” means a Key Employee, Director or Consultant selected to receive an Award under the Plan.

2.17 “Plan” means the Bluejay Diagnostics, Inc. 2021 Stock Plan.

2.18 “Stock Appreciation Right” or “SAR” means a grant of a right to receive shares of Common Stock or cash under Section 8 of the Plan.

2.19 “Stock Award” means a grant of shares of Common Stock under Section 6 of the Plan.

2.20 “Stock Option” means an Incentive Stock Option or a Non-Qualified Stock Option granted under Section 5 of the Plan.

2.21 “Stock Unit Award” means a grant of a right to receive shares of Common Stock or cash under Section 7 of the Plan.

2.22 “Subsidiary” means an entity of which the Company is the direct or indirect beneficial owner of not less than 50% of all issued and outstanding equity interest of such entity.

Section 3. Administration.

3.1 The Board.

The Plan shall be administered by the Committee, which shall be comprised of at least two members of the Board who satisfy the “non-employee director” definition set forth in Rule 16b-3 under the Exchange Act, unless the Board otherwise determines.

3.2 Authority of the Committee.

(a) The Committee, in its sole discretion, shall determine the Key Employees and Directors to whom, and the time or times at which Awards will be granted, the form and amount of each Award, the expiration date of each Award, the time or times within which the Awards may be exercised, the cancellation of the Awards and the other limitations, restrictions, terms and conditions applicable to the grant of the Awards. The terms and conditions of the Awards need not be the same with respect to each Participant or with respect to each Award.

(b) To the extent permitted by applicable law, regulation, and rules of a stock exchange on which the Common Stock is listed or traded, the Committee may delegate its authority to grant Awards to Key Employees and to determine the terms and conditions thereof to such officer of the Company as it may determine in its discretion, on such terms and conditions as it may impose, except with respect to Awards to officers subject to Section 16 of the Exchange Act.

(c) The Committee may, subject to the provisions of the Plan, establish such rules and regulations as it deems necessary or advisable for the proper administration of the Plan, and may make determinations and may take such other action in connection with or in relation to the Plan as it deems necessary or advisable. Each determination or other action made or taken pursuant to the Plan, including interpretation of the Plan and the specific terms and conditions of the Awards granted hereunder, shall be final and conclusive for all purposes and upon all persons.

(d) No member of the Board or the Committee shall be liable for any action taken or determination made hereunder in good faith. Service on the Committee shall constitute service as a Director so that the members of the Committee shall be entitled to indemnification and reimbursement as Directors of the Company pursuant to the Company's Certificate of Incorporation and By-Laws.

3.3 Award Agreements.

(a) Each Award shall be evidenced by a written Award Agreement specifying the terms and conditions of the Award. In the sole discretion of the Committee, the Award Agreement may condition the grant of an Award upon the Participant's entering into one or more of the following agreements with the Company: (i) an agreement not to compete with the Company and its Subsidiaries which shall become effective as of the date of the grant of the Award and remain in effect for a specified period of time following termination of the Participant's employment with the Company; (ii) an agreement to cancel any employment agreement, fringe benefit or compensation arrangement in effect between the Company and the Participant; and (iii) an agreement to retain the confidentiality of certain information. Such agreements may contain such other terms and conditions as the Committee shall determine. If the Participant shall fail to enter into any such agreement at the request of the Committee, then the Award granted or to be granted to such Participant shall be forfeited and cancelled.

Section 4. Shares of Common Stock Subject to Plan.

4.1 Total Number of Shares.

(a) The total number of shares of Common Stock that may be issued under the Plan shall be 1,960,000. Such shares may be either authorized but unissued shares or treasury shares, and shall be adjusted in accordance with the provisions of Section 4.3 of the Plan.

(b) The number of shares of Common Stock delivered by a Participant or withheld by the Company on behalf of any such Participant as full or partial payment of an Award, including the exercise price of a Stock Option or of any required withholding taxes, shall not again be available for issuance pursuant to subsequent Awards, and shall count towards the aggregate number of shares of Common Stock that may be issued under the Plan. Any shares of Common Stock purchased by the Company with proceeds from a Stock Option exercise shall not again be available for issuance pursuant to subsequent Awards, shall count against the aggregate number of shares that may be issued under the Plan and shall not increase the number of shares available under the Plan.

(c) If there is a lapse, forfeiture, expiration, termination or cancellation of any Award for any reason (including for reasons described in Section 3.3), or if shares of Common Stock are issued under such Award and thereafter are reacquired by the Company pursuant to rights reserved by the Company upon issuance thereof, the shares of Common Stock subject to such Award or reacquired by the Company shall again be available for issuance pursuant to subsequent Awards, and shall not count towards the aggregate number of shares of Common Stock that may be issued under the Plan.

4.2 Shares Under Awards.

Of the shares of Common Stock authorized for issuance under the Plan pursuant to Section 4.1:

(a) The maximum number of shares of Common Stock as to which a Key Employee may receive Stock Options or SARs in any calendar year is 250,000, except that the maximum number of shares of Common Stock as to which a Key Employee may receive Stock Options or SARs in the calendar year in which such Key Employee begins employment with the Company or its Subsidiaries is 250,000.

(b) The maximum number of shares of Common Stock that may be subject to Stock Options (ISOs and/or NSOs) is 1,960,000.

(c) The maximum number of shares of Common Stock that may be used for Stock Awards and/or Stock Unit Awards that may be granted to any Key Employee in any calendar year is 250,000, or, in the event the Award is settled in cash, an amount equal to the Fair Market Value of such number of shares on the date on which the Award is settled.

(d) The maximum number of shares of Common Stock subject to Awards granted under the Plan or otherwise during any one calendar year to any Director, taken together with any cash fees paid by the Company to such Director during such calendar year for service on the Board, will not exceed $300,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes).

The numbers of shares described herein shall be as adjusted in accordance with Section 4.3 of the Plan.

4.3 Adjustment.

In the event of any reorganization, recapitalization, stock split, stock distribution, merger, consolidation, split-up, spin-off, combination, subdivision, consolidation or exchange of shares, any change in the capital structure of the Company or any similar corporate transaction, the Committee shall make such adjustments as it deems appropriate, in its sole discretion, to preserve the benefits or intended benefits of the Plan and Awards granted under the Plan. Such adjustments may include: (a) adjustment in the number and kind of shares reserved for issuance under the Plan; (b) adjustment in the number and kind of shares covered by outstanding Awards; (c) adjustment in the exercise price of outstanding Stock Options or SARs or the price of Stock Awards or Stock Unit Awards under the Plan; (d) adjustments to any of the shares limitations set forth in Section 4.1 or 4.2 of the Plan; and (e) any other changes that the Committee determines to be equitable under the circumstances.

Section 5. Grants of Stock Options.

5.1 Grant.

Subject to the terms of the Plan, the Committee may from time to time grant Stock Options to Participants. Unless otherwise expressly provided at the time of the grant, Stock Options granted under the Plan to Key Employees will be NSOs. Stock Options granted under the Plan to Directors who are not employees of the Company or any Subsidiary will be NSOs.

5.2 Stock Option Agreement.

The grant of each Stock Option shall be evidenced by a written Stock Option Agreement specifying the type of Stock Option granted, the exercise period, the exercise price, the terms for payment of the exercise price, the expiration date of the Stock Option, the number of shares of Common Stock to be subject to each Stock Option and such other terms and conditions established by the Committee, in its sole discretion, not inconsistent with the Plan.

5.3 Exercise Price and Exercise Period.

With respect to each Stock Option granted to a Participant:

(a) The per share exercise price of each Stock Option shall be the Fair Market Value of the Common Stock subject to the Stock Option on the date on which the Stock Option is granted.

(b) Each Stock Option shall become exercisable as provided in the Stock Option Agreement; provided that the Committee shall have the discretion to accelerate the date as of which any Stock Option shall become exercisable in the event of the Participant's termination of employment with the Company, or service on the Board, without cause (as determined by the Board in its sole discretion).

(c) No dividends or dividend equivalents shall be paid with respect to any shares subject to a Stock Option prior to the exercise of the Stock Option.

(d) Each Stock Option shall expire, and all rights to purchase shares of Common Stock thereunder shall expire, on the date ten years after the date of grant.

5.4 Required Terms and Conditions of ISOs.

In addition to the foregoing, each ISO granted to a Key Employee shall be subject to the following specific rules:

(a) The aggregate Fair Market Value (determined with respect to each ISO at the time such Option is granted) of the shares of Common Stock with respect to which ISOs are exercisable for the first time by a Key Employee during any calendar year (under all incentive stock option plans of the Company and its Subsidiaries) shall not exceed $100,000. If the aggregate Fair Market Value (determined at the time of grant) of the Common Stock subject to an ISO which first becomes exercisable in any calendar year exceeds the limitation of this Section 5.4(a), so much of the ISO that does not exceed the applicable dollar limit shall be an ISO and the remainder shall be a NSO; but in all other respects, the original Stock Option Agreement shall remain in full force and effect.

(b) Notwithstanding anything herein to the contrary, if an ISO is granted to a Key Employee who owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company (or its parent or subsidiaries within the meaning of Section 422(b)(6) of the Code): (i) the purchase price of each share of Common Stock subject to the ISO shall be not less than 110% of the Fair Market Value of the Common Stock on the date the ISO is granted; and (ii) the ISO shall expire, and all rights to purchase shares of Common Stock thereunder shall expire, no later than the fifth anniversary of the date the ISO was granted.

(c) No ISOs shall be granted under the Plan after ten years from the earlier of the date the Plan is adopted or approved by shareholders of the Company.

5.5 Exercise of Stock Options.

(a) A Participant entitled to exercise a Stock Option may do so by delivering written notice to that effect specifying the number of shares of Common Stock with respect to which the Stock Option is being exercised and any other information the Committee may prescribe. All notices or requests provided for herein shall be delivered to the Chief Financial Officer of the Company.

(b) The Committee in its sole discretion may make available one or more of the following alternatives for the payment of the Stock Option exercise price: (i) in cash; (ii) in cash received from a broker-dealer to whom the Participant has submitted an exercise notice together with irrevocable instructions to deliver promptly to the Company the amount of sales proceeds from the sale of the shares subject to the Stock Option to pay the exercise price; (iii) by directing the Company to withhold such number of shares of Common Stock otherwise issuable in connection with the exercise of the Stock Option having an aggregate Fair Market Value equal to the exercise price; (iv) by delivering previously acquired shares of Common Stock that are acceptable to the Committee and that have an aggregate Fair Market Value on the date of exercise equal to the Stock Option exercise price; or (v) by certifying to ownership by attestation of such previously acquired shares of Common Stock.

The Committee shall have the sole discretion to establish the terms and conditions applicable to any alternative made available for payment of the Stock Option exercise price.

Section 6. Stock Awards.

6.1 Grant.

The Committee may, in its discretion, (a) grant shares of Common Stock under the Plan to any Participant without consideration from such Participant or (b) sell shares of Common Stock under the Plan to any Participant for such amount of cash, Common Stock or other consideration as the Committee deems appropriate.

6.2 Stock Award Agreement.

Each share of Common Stock granted or sold hereunder shall be subject to such restrictions, conditions and other terms as the Board may determine at the time of grant or sale, the general provisions of the Plan, the restrictions, terms and conditions of the related Stock Award Agreement, and the following specific rules:

(a) The Award Agreement shall specify whether the shares of Common Stock are granted or sold to the Participant and such other provisions, not inconsistent with the terms and conditions of the Plan, as the Committee shall determine.

(b) The restrictions to which the shares of Common Stock awarded hereunder are subject shall lapse as provided in Stock Award Agreement; provided that the Committee shall have the discretion to accelerate the date as of which the restrictions lapse with respect to any Award held by a Participant in the event of the Participant's termination of employment with the Company, or service on the Board, without cause (as determined by the Committee in its sole discretion).

(c) Except as provided in this subsection (c) and unless otherwise set forth in the related Stock Award Agreement, the Participant receiving a grant of or purchasing Common Stock shall thereupon be a stockholder with respect to such shares and shall have the rights of a stockholder with respect to such shares, including the right to vote such shares and to receive dividends and other distributions paid with respect to such shares; provided that any dividends or other distributions payable with respect to the Stock Award shall be accumulated and held by the Company and paid to the Participant only upon, and to the extent, the restrictions lapse in accordance with the terms of the applicable Stock Award Agreement. Any such dividends or other distributions held by the Company attributable to the portion of a Stock Award that is forfeited shall also be forfeited.

Section 7. Stock Unit Awards.

7.1 Grant.

The Committee may, in its discretion, grant Stock Unit Awards to any Participant. Each Stock Unit subject to the Award shall entitle the Participant to receive, on the date or the occurrence of an event (including the attainment of performance goals) as described in the Stock Unit Award Agreement, a share of Common Stock or cash equal to the Fair Market Value of a share of Common Stock on the date of such event as provided in the Stock Unit Award Agreement.

7.2 Stock Unit Agreement.

Each Stock Unit Award shall be subject to such restrictions, conditions and other terms as the Committee may determine at the time of grant, the general provisions of the Plan, the restrictions, terms and conditions of the related Stock Unit Award Agreement and the following specific rules:

(a) The Stock Unit Agreement shall specify such provisions, not inconsistent with the terms and conditions of the Plan, as the Committee shall determine.

(b) The restrictions to which the shares of Stock Units awarded hereunder are subject shall lapse as provided in Stock Unit Agreement; provided that the Committee shall have the discretion to accelerate the date as of which the restrictions lapse with respect to any Award held by a Participant in the event of the Participant's termination of employment with the Company, or service on the Board, without cause (as determined by the Board in its sole discretion).

(c) Except as provided in this subsection (c) and unless otherwise set forth in the Stock Unit Agreement, the Participant receiving a Stock Unit Award shall have no rights of a stockholder, including voting or dividends or other distributions rights, with respect to any Stock Units prior to the date they are settled in shares of Common Stock; provided that a Stock Unit Award Agreement may provide that until the Stock Units are settled in shares or cash, the Participant shall be entitled to receive on each dividend or distribution payment date applicable to the Common Stock an amount equal to the dividends or other distributions that the Participant would have received had the Stock Units held by the Participant as of the related record date been actual shares of Common Stock. Such amounts shall be accumulated and held by the Company and paid to the Participant only upon, and to the extent, the restrictions lapse in accordance with the terms of the applicable Stock Unit Award Agreement. Such amounts held by the Company attributable to the portion of the Stock Unit Award that is forfeited shall also be forfeited.

Section 8. SARs.

8.1 Grant.

The Committee may grant SARs to Participants. Upon exercise, an SAR entitles the Participant to receive from the Company the number of shares of Common Stock having an aggregate Fair Market Value equal to the excess of the Fair Market Value of one share as of the date on which the SAR is exercised over the exercise price, multiplied by the number of shares with respect to which the SAR is being exercised. The Committee, in its discretion, shall be entitled to cause the Company to elect to settle any part or all of its obligations arising out of the exercise of an SAR by the payment of cash in lieu of all or part of the shares it would otherwise be obligated to deliver in an amount equal to the Fair Market Value of such shares on the date of exercise. Cash shall be delivered in lieu of any fractional shares. The terms and conditions of any such Award shall be determined at the time of grant.

8.2 SAR Agreement.

(a) Each SAR shall be evidenced by a written SAR Agreement specifying the terms and conditions of the SAR as the Committee may determine, including the SAR exercise price, expiration date of the SAR, the number of shares of Common Stock to which the SAR pertains, the form of settlement and such other terms and conditions established by the Committee, in its sole discretion, not inconsistent with the Plan.

(b) The per Share exercise price of each SAR shall not be less than 100% of the Fair Market Value of a Share on the date the SAR is granted.

(c) Each SAR shall expire and all rights thereunder shall cease on the date fixed by the Committee in the related SAR Agreement, which shall not be later than the ten years after the date of grant; provided however, if a Participant is unable to exercise an SAR because trading in the Common Stock is prohibited by law or the Company's insider-trading policy, the SAR exercise date shall be extended to the date that is 30 days after the expiration of the trading prohibition.

(d) Each SAR shall become exercisable as provided in the related SAR Agreement; provided that notwithstanding any other Plan provision, the Committee shall have the discretion to accelerate the date as of which any SAR shall become exercisable in the event of the Participant's termination of employment, or service on the Board, without cause (as determined by the Committee in its sole discretion).

(e) No dividends or dividend equivalents shall be paid with respect to any SAR prior to the exercise of the SAR.

(f) A person entitled to exercise an SAR may do so by delivery of a written notice in accordance with procedures established by the Committee specifying the number of shares of Common Stock with respect to which the SAR is being exercised and any other information the Committee may prescribe. As soon as reasonably practicable after the exercise of an SAR, the Company shall (i) issue the total number of full shares of Common Stock to which the Participant is entitled and cash in an amount equal to the Fair Market Value, as of the date of exercise, of any resulting fractional share, and (ii) if the Committee causes the Company to elect to settle all or part of its obligations arising out of the exercise of the SAR in cash, deliver to the Participant an amount in cash equal to the Fair Market Value, as of the date of exercise, of the shares it would otherwise be obligated to deliver.

Section 9. Change in Control.

9.1 Effect of a Change in Control.

(a) Notwithstanding any of the provisions of the Plan or any outstanding Award Agreement, upon a Change in Control of the Company (as defined in Section 9.2), the Board is authorized and has sole discretion to provide that (i) all outstanding Awards shall become fully exercisable, (ii) all restrictions applicable to all Awards shall terminate or lapse and (iii) performance goals applicable to any Awards shall be deemed satisfied at the highest level, as applicable, in order that Participants may realize the benefits thereunder.

(b) In addition to the Board's authority set forth in Section 3, upon such Change in Control of the Company, the Board is authorized and has sole discretion as to any Award, either at the time such Award is granted hereunder or any time thereafter, to take any one or more of the following actions: (i) provide for the purchase of any outstanding Stock Option, for an amount of cash equal to the difference between the exercise price and the then Fair Market Value of the Common Stock covered thereby had such Stock Option been currently exercisable; (ii) make such adjustment to any such Award then outstanding as the Board deems appropriate to reflect such Change in Control; and (iii) cause any such Award then outstanding to be assumed by the acquiring or surviving corporation after such Change in Control.

9.2 Definition of Change in Control.

"Change in Control" of the Company shall be deemed to have occurred if at any time during the term of an Award granted under the Plan any of the following events occurs:

(a) any Person (other than the Company, a trustee or other fiduciary holding securities under an employee benefit plan of the Company, or a corporation owned directly or indirectly by the shareholders of the Company in substantially the same proportions as their ownership of shares of Common Stock of the Company) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities entitled to vote generally in the election of directors ("Person" and "Beneficial Owner" being defined in Rule 13d-3 of the General Rules and Regulations of the Exchange Act);

(b) the Company is party to a merger, consolidation, reorganization or other similar transaction with another corporation or other Person unless, following such transaction, more than 50% of the combined voting power of the outstanding securities of the surviving, resulting or acquiring corporation or Person or its parent entity entitled to vote generally in the election of directors (or Persons performing similar functions) is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the Company's outstanding securities entitled to vote generally in the election of directors immediately prior to such transaction, in substantially the same proportions as their ownership, immediately prior to such transaction, of the Company's outstanding securities entitled to vote generally in the election of directors;

(c) the election to the Board, without the recommendation or approval of two-thirds of the incumbent Board, of the lesser of: (i) three Directors; or (ii) Directors constituting a majority of the number of Directors of the Company then in office; provided, however, that Directors whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of Directors of the Company will not be considered as incumbent members of the Board for purposes of this Section; or

(d) there is a complete liquidation or dissolution of the Company, or the Company sells all or substantially all of its business and/or assets to another corporation or other Person unless, following such sale, more than 50% of the combined voting power of the outstanding securities of the acquiring corporation or Person or its parent entity entitled to vote generally in the election of directors (or Persons performing similar functions) is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the Company's outstanding securities entitled to vote generally in the election of directors immediately prior to such sale, in substantially the same proportions as their ownership, immediately prior to such sale, of the Company's outstanding securities entitled to vote generally in the election of directors.

In no event, however, shall a Change in Control be deemed to have occurred, with respect to a Participant, if that Participant is part of a purchasing group which consummates the Change in Control transaction. A Participant shall be deemed "part of a purchasing group" for purposes of the preceding sentence if the Participant is an equity participant or has agreed to become an equity participant in the purchasing company or group (except for (a) passive ownership of less than 3% of the shares of the purchasing company; or (b) ownership of equity participation in the purchasing company or group which is otherwise not deemed to be significant, as determined prior to the Change in Control by a majority of the disinterested Directors).

Section 10. Payment of Taxes.

(a) In connection with any Award, and as a condition to the issuance or delivery of any shares of Common Stock to the Participant in connection therewith, the Company shall require the Participant to pay the Company the minimum amount of federal, state, local or foreign taxes required to be withheld, and in the Company's sole discretion, the Company may permit the Participant to pay the Company up to the maximum individual statutory rate of applicable withholding.

(b) The Company in its sole discretion may make available one or more of the following alternatives for the payment of such taxes: (i) in cash; (ii) in cash received from a broker-dealer to whom the Participant has submitted notice together with irrevocable instructions to deliver promptly to the Company the amount of sales proceeds from the sale of the shares subject to the Award to pay the withholding taxes; (iii) by directing the Company to withhold such number of shares of Common Stock otherwise issuable in connection with the Award having an aggregate Fair Market Value equal to the minimum amount of tax required to be withheld; (iv) by delivering previously acquired shares of Common Stock of the Company that are acceptable to the Board that have an aggregate Fair Market Value equal to the amount required to be withheld; or (v) by certifying to ownership by attestation of such previously acquired shares of Common Stock.

The Committee shall have the sole discretion to establish the terms and conditions applicable to any alternative made available for payment of the required withholding taxes.

Section 11. Postponement.

The Committee may postpone any grant or settlement of an Award or exercise of a Stock Option or SAR for such time as the Board in its sole discretion may deem necessary in order to permit the Company:

(a) to effect, amend or maintain any necessary registration of the Plan or the shares of Common Stock issuable pursuant to an Award, including upon the exercise of a Stock Option or SAR, under the Securities Act of 1933, as amended, or the securities laws of any applicable jurisdiction;

(b) to permit any action to be taken in order to (i) list such shares of Common Stock on a stock exchange if shares of Common Stock are then listed on such exchange or (ii) comply with restrictions or regulations incident to the maintenance of a public market for its shares of Common Stock, including any rules or regulations of any stock exchange on which the shares of Common Stock are listed; or

(c) to determine that such shares of Common Stock and the Plan are exempt from such registration or that no action of the kind referred to in (b)(ii) above needs to be taken; and the Company shall not be obligated by virtue of any terms and conditions of any Award or any provision of the Plan to sell or issue shares of Common Stock in violation of the Securities Act of 1933 or the law of any government having jurisdiction thereof.

Any such postponement shall not extend the term of an Award and neither the Company nor its Directors or officers shall have any obligation or liability to a Participant, the Participant's successor or any other person with respect to any shares of Common Stock as to which the Award shall lapse because of such postponement.

Section 12. Nontransferability.

Awards granted under the Plan, and any rights and privileges pertaining thereto, may not be transferred, assigned, pledged or hypothecated in any manner, or be subject to execution, attachment or similar process, by operation of law or otherwise, other than by will or by the laws of descent and distribution.

Section 13. Delivery of Shares.

Shares of Common Stock issued pursuant to a Stock Award, the exercise of a Stock or SAR or the settlement of a Stock Unit Award shall be represented by stock certificates or on a non-certificated basis, with the ownership of such shares by the Participant evidenced solely by book entry in the records of the Company's transfer agent; provided, however, that upon the written request of the Participant, the Company shall issue, in the name of the Participant, stock certificates representing such shares of Common Stock. Notwithstanding the foregoing, shares granted pursuant to a Stock Award shall be held by the Secretary of the Company until such time as the shares are forfeited or settled.

Section 14. Termination or Amendment of Plan and Award Agreements.

14.1 Termination or Amendment of Plan.

(a) Except as described in Section 14.3 below, the Board may terminate, suspend, or amend the Plan, in whole or in part, from time to time, without the approval of the stockholders of the Company, unless such approval is required by applicable law, regulation or rule of any stock exchange on which the shares of Common Stock are listed. No amendment or termination of the Plan shall adversely affect the right of any Participant under any outstanding Award in any material way without the written consent of the Participant, unless such amendment or termination is required by applicable law, regulation or rule of any stock exchange on which the shares of Common Stock are listed. Subject to the foregoing, the Committee may correct any defect or supply an omission or reconcile any inconsistency in the Plan or in any Award granted hereunder in the manner and to the extent it shall deem desirable, in its sole discretion, to effectuate the Plan.

(b) The Board shall have the authority to amend the Plan to the extent necessary or appropriate to comply with applicable law, regulation or accounting rules in order to permit Participants who are located outside of the United States to participate in the Plan.

14.2 Amendment of Award Agreements.

The Committee shall have the authority to amend any Award Agreement at any time; provided however, that no such amendment shall adversely affect the right of any Participant under any outstanding Award Agreement in any material way without the written consent of the Participant, unless such amendment is required by applicable law, regulation or rule of any stock exchange on which the shares of Common Stock are listed.

14.3 No Repricing of Stock Options.

Notwithstanding the foregoing, and except as described in Section 4.3, there shall be no amendment to the Plan or any outstanding Stock Option Agreement or SAR Agreement that results in the repricing of Stock Options or SARs without stockholder approval. For this purpose, repricing includes (i) a reduction in the exercise price of the Stock Option or SARs or (ii) the cancellation of a Stock Option in exchange for cash, Stock Options or SARs with an exercise price less than the exercise price of the cancelled Options or SARs, other Awards or any other consideration provided by the Company, but does not include any adjustment described in Section 4.3.

Section 15. No Contract of Employment.

Neither the adoption of the Plan nor the grant of any Award under the Plan shall be deemed to obligate the Company or any Subsidiary to continue the employment of any Participant for any particular period, nor shall the granting of an Award constitute a request or consent to postpone the retirement date of any Participant.

Section 16. Applicable Law.

All questions pertaining to the validity, construction and administration of the Plan and all Awards granted under the Plan shall be determined in conformity with the laws of the Commonwealth of Massachusetts, without regard to the conflict of law provisions of any state, and, in the case of Incentive Stock Options, Section 422 of the Code and regulations issued thereunder.

Section 17. Effective Date and Term of Plan.

17.1 Effective Date.

(a) The Plan has been adopted by the Board, and is effective, as of July 6, 2021, subject to the approval of the Plan by the stockholders of the Company.

(b) In the event the Plan is not approved by stockholders of the Company within 12 months of the date hereof, the Plan shall have no effect.

17.2 Term of Plan.

Notwithstanding anything to the contrary contained herein, no Awards shall be granted on or after July 6, 2031.

LICENSE AND SUPPLY AGREEMENT

This License and Supply Agreement (this "**Agreement**") is made as of the 6th of October, 2020 by and between Bluejay Diagnostics, having its principal place of business at 360 Massachusetts Avenue, Suite 203, Acton, MA, 01720, USA ("**Bluejay**") and Toray Industries, Inc., having its principal place of business at 1-1, Nihonbashi-muromachi 2-chome, Chuo-ku, Tokyo 103-8666, Japan ("**Toray**"). Bluejay and Toray are together referred to as the "**Parties**" and individually as a "**Party**".

BACKGROUND

(A) Toray is engaged in the manufacture of protein detection chip that has a function of automatic stepwise feeding of reagent ("**Products**");

(B) Bluejay is engaged in the distribution of certain medicinal products in the world except for Japan;

(C) Bluejay is interested in pursuing the marketing, promotion, sales and distribution of Products in the Territory directly or through its Affiliates after such date and desires to obtain from Toray a certain license necessary therefor; and

(D) Toray desires to grant such license to Bluejay under the terms and conditions set forth hereinafter.

NOW THEREFORE, in consideration of the covenants contained herein, the Parties hereby agree as follows:

Article 1. DEFINITIONS

For the purpose of this Agreement, the following capitalized terms (the singular may include the plural and *vice versa)* shall have the following meanings:

1.1 "Affiliate" means in respect of either Party, any Person that directly, or indirectly through one of more intermediaries, controls, is controlled by or is under common control with such Party. For the purpose of this Agreement and as used in this definition of "Affiliate", "control" and, with correlative meanings, the terms "controlled by" and "under common control with," shall mean to possess the power to direct management or policies of such Party, whether through: (a), direct or indirect beneficial ownership of more than fifty percent (50%) of the voting interest in such entity; (b) the right to appoint more than fifty percent (50%) of the directors of such Party; or (c) by contract or otherwise.

1.2 "Commercial Sales" means the commercial transfer or disposition for value of Product in a country in the Territory to a third party by Bluejay, any of its Affiliates, subcontractors or sublicensees in each case, after obtaining all necessary Market Approvals as set forth in Sections 3.1 and 3.2 for such country.

1.3 "Commercial Sales Year" means any twelve (12)-month period commencing from the next day of the end of the previous Commercial Sales Year. Commercial Sales Year 1 shall commence from the date on which the Commercial Sales commence.

1.4 "Confidential Information" of a Party means any proprietary or confidential information of any nature of such Party. Confidential Information may include, but shall not be limited to, the Toray Know-How, processes, compilations of information, records, specifications, cost and pricing information, customer lists, catalogs, booklets, technical advertising and selling data, samples, and the fact of either Party's intent to manufacture or market any new product, and except for information which is public or general industry knowledge, all information furnished by a Party to the other Party shall be considered to be Confidential Information, whether or not specifically so designated.

1.5 "Effective Date" means the date first provided above.

1.6 "Intellectual Property Rights" means all patent, industrial design, registered design, unregistered design right, trade secret, trade dress, moral right, copyright, and right in invention, ideas, work methodology, works of authorship, technology, innovation, creation, concepts, drawings, research, analysis, know-how, experiment, method, procedure, process, system, technique and other intellectual property rights or proprietary rights, including, in all cases, an application therefor and right to apply thereafter.

1.7 "Improvements" means any discoveries, inventions, formulations, processes, methods, know-how, techniques, formulae, compositions, compounds, or applications relating to the Product during the term of this Agreement.

1.8 "Joint Marketing Planning Meeting" has the meaning ascribed to it in Section 11.1.

1.9 "Market Approval(s)" means all approvals, clearances, licenses, registrations, or authorizations by an applicable Regulatory Authority necessary to import, commercialize and market the Product in the Territory, including pricing and reimbursement approval in the Territory.

1.10 "Net Sales" means the gross amount collected by Bluejay, its Affiliates, subcontractors and sublicensees for Commercial Sales, less standard deductions taken in accordance with the United States generally accepted accounting principles (GAAP).

1.11 "Patents" means the patents listed and described in the Exhibit A, plus (a) all divisionals, continuations, continuations-in-part thereof or any other patent rights claiming priority directly or indirectly to any of the issues patents or patent applications identified on Exhibit A, and (b) all patents issuing on any of the foregoing, together with all registrations, reissues, re-examinations, renewals, supplemental protection certificates and extensions of any of the foregoing, and all foreign counterparts thereof.

1.12 "Person" means an individual, sole proprietorship, partnership, limited partnership, limited liability partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other legal entity or organization, including a government or political subdivision, department or agency of a government.

1.13 "PO" means a written purchase order to be placed by Bluejay to Toray for Toray Chips.

1.14 "Product(s)" has the meaning ascribed to it in Background Section (A).

1.15 "Public Official" means has the meaning ascribed to it in Section 16.3.

1.16 "Regulatory Authority(s)" means the Food and Drug Administration ("FDA") or any successor entity of the United States of America, any entity in charge of CE marking in the European Union and any other governmental authority whose approval is required for the commercialization of the Product in the Territory.

1.17 "Specifications" means the specifications listed and as described in the Exhibit C.

1.18 "Territory" means worldwide except for Japan.

1.19 "Toray Chips" means the Products for IL-6 and IL-8 supplied by Toray.

1.20 "Toray Know-How" means all: (i) trade secrets and confidential business information relating to the Product, and (ii) any other scientific or technical information and data relating to the Product owned and/or controlled by Toray, which are necessary and/or useful for Bluejay to make, have made, promote, market, promote, sell and distribute the Product in the Territory, including the information listed in the Exhibit B.

1.21 "Trademark" means the mark "RAY-FAST®", and any other word, name, symbol, color, designation or device or any combination thereof owned by Toray, including, without limitation, any trademark, trade dress, brand mark, house mark, trade name, brand name, logo, or business symbol (whether or not registered or registerable) used in association with the Product, and all trademark applications and registrations related thereto.

1.22 "Valid Claim" shall mean a claim of an issued or granted patent of the Patents which has not lapsed or become abandoned, which claim has not been declared invalid or unenforceable by a final, non-appealable decision or judgment of a court of competent jurisdiction, and that has not been explicitly disclaimed, or admitted in writing to be invalid or unenforceable or of a scope not covering a particular product or service through reissue, disclaimer or otherwise, provided that if a particular claim has not issued within five (5) years of its priority date, it will not be considered a Valid Claim for purposes of this Agreement unless and until such claim is included in an issued or granted Patent, notwithstanding the foregoing definition.

Article 2. GRANT OF LICENSES

2.1 **Exclusive License.** Subject to the terms and conditions hereof, Toray hereby grants to Bluejay an exclusive (even as to Toray) and sublicensable (only in accordance with Section 2.3) license, under the Patents and Toray Know-How, to make, have made, use, promote, market, sell, offer to sell, import, distribute the Products and otherwise exploit, and import, label and repackage Toray Chips, in the Territory.

2.2 **Non-Exclusive License.** Subject to the terms and conditions hereof, Toray hereby grants to Bluejay a non-exclusive and sublicensable (only in accordance with Section 2.3) license, under the Patents and Toray Know-How, to make, have made the Products in Japan.

2.3 **Subcontract.** Bluejay may sublicense its rights under Sections 2.1 and 2.2 to its Affiliates, contract manufacturing organizations, contract research organizations, distributors, and other third party contractors and service providers for the sole purpose of performing Bluejay's obligations or exercising Bluejay's rights with respect to the development, manufacture and commercialization or other exploitation of Products and Toray Chips in the Territory with Toray's prior written consent. Bluejay shall require such Affiliates, subcontractors and sublicensees to undertake and be bounded by the terms and conditions of this Agreement relating to the subcontracted activities and shall be responsible for any breach of such terms and conditions by such third party. Bluejay shall have the same responsibility of the activities of its Affiliates, subcontractors or sublicensees under any such arrangements as of the activities were directly those of Bluejay. For clarity, and not by way of limitation, any royalties shall be paid to Toray by Bluejay with regard to the activities of its Affiliates, subcontractors, and sublicensees.

Article 3. **COMMERCIALIZATION**

3.1 **Obtaining Market Approval.** Bluejay shall, upon the execution of this Agreement, use commercially reasonable efforts to seek the Market Approval from the Regulatory Authorities in the Territory at its own cost and responsibility. Bluejay shall inform and report to Toray the progress in obtaining the Market Approval on a monthly basis and shall use commercially reasonable efforts to obtain Market Approvals as early as possible but within three (3) years from the Effective Date for the Product in the United States of America and the European Union. Whenever Bluejay files an application for Market Approval with the Regulatory Authority in any country in the Territory, Bluejay shall provide Toray with a summary of such application submitted to the Regulatory Authority in English (including any amendments thereto). Bluejay may use Toray Know-how for application of the Market Approval, however, any and all rights in and to Toray Know-how shall at all times remain in the sole property of Toray.

3.2 **Maintaining Market Approval.** Bluejay shall, at its own cost, maintain the Market Approval and shall not cause the Market Approval to be transferred to any third party without Toray's prior written consent. Bluejay shall have primary responsibility for all communications, submissions and interactions with the Regulatory Authority for the purposes of maintain the Market Approval. Upon expiration or termination of this Agreement, Bluejay shall promptly assign back to Toray or any other party, designated by Toray, the Market Approval and its related rights in the Territory with no cost to Toray or such designated party.

3.3 **Promotion Plan, Sales Forecast and Estimate for Requirement.** Within one (1) month from the 1st milestone payment as set forth in Section 4.1.1, Bluejay shall prepare its promotion plan and sales forecast of the Products and estimate of its requirements of Toray Chips for the 1st year commencing from the acceptance date by Toray of the 1st milestone payment. Thereafter, Bluejay shall prepare its promotion plan and non-binding sales forecast of the Products and estimate of its requirements of Toray Chips every three (3) months for three (3) years.

3.4 **Starting Commercial Sales.** Bluejay shall make commercially reasonable efforts to start Commercial Sales within five (5) years from the execution of this Agreement, but as soon as practicably possible after obtaining the Market Approval. In case Bluejay fails to start Commercial Sales within five (5) years from the execution of this Agreement for reasons directly attributable to Bluejay, Toray shall have the right, at Toray's sole discretion, either to convert the exclusive license set forth in Section 2.1 to a non-exclusive license or to terminate this Agreement.

3.5 **Extension Period.** In case Bluejay fails to start Commercial Sales within five (5) years from the execution of this Agreement due to reasons not attributable to Bluejay, the period for which the exclusive license is granted pursuant to Section 2.1 shall be extended for an additional six (6) months, repeatedly if necessary, provided that such additional extension period shall not exceed eighteen (18) months in total.

3.6 **Sales Efforts.** Bluejay shall make commercially reasonable efforts consistent with normal business practices in the medical device industry to expand sales activities of the Products.

3.7 **Efforts for Obtaining an Reimbursement Approval.** Bluejay shall make commercially reasonable efforts in obtaining a reimbursement approval on each of the national markets in the Territory.

3.8 **Sales Reports.** Within thirty (30) days after the close of each calendar quarter during the period Bluejay is marketing the Products in the Territory, Bluejay shall provide Toray with high-level summaries of; (i) quarterly sales reports for the Products for such calendar quarter in each country of the Territory; (ii) the stock reports of the Products as of the last day of such calendar quarter; and (iii) general information of market situation for medical products for such calendar quarter included within its own internal reporting.

3.9 **Licensor's Name.** Bluejay shall not use or indicate on each label, packaging, packaging inserts and patient leaflets of the Products, to the extent permitted by the laws and regulations of the Territory, the words indicating name of Toray as licensor of the Products. Bluejay shall obtain prior written approval of Toray in respect of the manner and methods of indicating the name of Toray on any material by submitting such drafts to Toray.

Article 4. **CONSIDERATION FOR LICENSED RIGHTS**

4.1 **Milestone Payments.** In consideration for the ongoing rights, licenses and privileges granted hereunder:

4.1.1 Bluejay shall pay One Hundred Twenty Thousand U.S. Dollars (US$120,000) within ninety (90) days from the Effective Date to Toray; and

4.1.2 Bluejay shall pay One Hundred Twenty Thousand U.S. Dollars (US$120,000) within thirty (30) days from the date on which three (3) months prior to the 1st anniversary date from the 1st milestone payment as set forth above.

4.2 **Running Royalty.** For the period that any Patents exist or for five (5) years after the first Commercial Sales of the Products, whichever comes later, Bluejay shall pay to Toray a royalty of fifteen percent (15%) of the Net Sales of the Products in the country where a Valid Claim of a Patent covers such Product in such country where the Product was sold. On a product-by-product and country-by-country basis, such royalty shall be reduced by fifty percent (50%) if at any time such Product is no longer covered by a Valid Claim of a Patent in such country where the Product is sold.

4.3 **Payment of Royalties.** Royalties for each quarter of any calendar year shall be paid within thirty (30) days after the end of such calendar quarter. Bluejay shall provide Toray with a report showing the calculation of any royalties paid.

4.4 **Minimum Royalties.** Following the first Commercial Sales of the Products in a country, Bluejay shall pay Toray a one-time minimum royalty of Sixty Thousand U.S. Dollars (US$60,000), which shall be creditable against any royalties owed by Bluejay to Toray in such calendar year except for the milestone payments set forth in Section **4.1.** For the calendar years following the first Commercial Sales of the Products in a country, Bluejay shall pay Toray a minimum royalty of One Hundred Thousand U.S. Dollars (US$100,000) per each year, which shall be payable once per each year and creditable against any royalties owed by Bluejay to Toray in such calendar year except for the milestone payments set forth in Section 4.1.

4.5 **Withholding Taxes.** If at any time during the term hereof, any governmental authority shall require that taxes shall be withheld by Bluejay and remitted directly to the governmental authority on behalf of Toray, Bluejay shall promptly transmit to Toray tax receipts issued by the appropriate tax authorities in respect of such taxes so withheld and remitted so as to enable Toray to support a claim for credit against income taxes payable by Toray.

4.6 **Audits.** Bluejay shall keep true, complete, accurate and separate records, files and books of account containing all the data necessary for the full computation and verification of royalties. For a period of one (1) year following any payment of royalties made by Bluejay to Toray pursuant to Sections 4.2 and 4.3, and upon Toray's reasonable advance written notice to Bluejay, Bluejay shall permit Toray and/or any independent certified accountant engaged by Toray to inspect the records, files and books of Bluejay, its Affiliates, subcontractors or sublicensees, solely and exclusively related to the sales of Products. Such inspection shall be completed during regular business hours, in a manner that minimizes disruption to their businesses. Any such audit shall be at the sole expense of Toray, except if any audit discloses that Bluejay owes royalties to Toray in excess of three percent (3%) of the royalties actually paid for the time period covered by such audit, in which case Bluejay will reimburse Toray for the costs of the audit.

Article 5. **TECHNICAL SUPPORTS**

5.1 **Toray Know-How.** Within six (6) months from the Effective Date, Toray shall provide Bluejay with electronic or paper copy(ies) in English language of all documents, data or other information in Toray's possession or control as of the Effective Date that constitutes Toray Know-How.

5.2 **Technical Assistance.** Upon the request of Bluejay during the effective term of this Agreement and if it is reasonably acceptable for Toray, Toray will dispatch its technical personnel to Bluejay or the place designated by Bluejay for the technical assistance relating to Toray Chips and Toray Know-How. Bluejay shall pay to Toray One Thousand U.S. Dollars (US$1,000) per man per day on a business day basis in addition to actual flight and accommodation fees for such dispatch. Such technical assistance shall include technical assistance for obtaining Market Approval of International Organization for Standardization (ISO), Quality Management System (QMS), CE marking and the FDA for Bluejay or companies designated by Bluejay.

5.3 **Rent of Devices for Analysis.** Toray shall rent fifteen (15) devices for analysis (RD-100), which are used with Toray Chips and currently owned by Toray's subsidiary company, Toray Medical Co., Ltd., to Bluejay from September 2020 at earliest. Bluejay shall bear any costs and expenses for the shipment and setup of such devices. Toray shall support Bluejay through the technical assistance rendered pursuant to Section 5.2 for the setup and maintenance of such devices to the extent reasonable. Bluejay shall bear any costs and expenses for repair or maintenance of such devices. Such devices shall be returned to Toray upon the termination or expiration of this Agreement, and any costs and expenses for such return shall be borne by Bluejay.

Article 6. **USE OF TRADEMARK**

6.1 Bluejay shall not use the Trademark and shall label and repackage Toray Chips with its own trademark and market, promote, sell or distribute only the Product under such trademark in the Territory.

Article 7. **PURCHASE AND SUPPLY**

7.1 **Purchase and Supply Obligations.** For three (3) years from the acceptance date by Toray of the 1st milestone payment as set forth in Section 4.1.1 for Toray Chips placed by Bluejay, Bluejay shall purchase Toray Chips from Toray and Toray shall supply Toray Chips to Bluejay. The Parties may extend such three (3) years purchase and supply period with mutual written consent for a further period of up to one (1) year.

7.2 **Failure to Supply.** In the event Toray fails to deliver the quantities of Toray Chips specified in any binding PO (except the 1st PO) by more than ninety (90) days of the delivery date set forth therein due to the reasons directly attributable to Toray, then Toray will discuss the possibility to reduce the price specified in Section 7.5.

7.3 **Safety Stock.** Toray will procure and maintain for the manufacturing of the Toray Chips a safety stock of raw materials and other components required to be used by Toray for the manufacture of the Toray Chips and as necessary to satisfy the minimum order quantities specified in Section 7.4. In addition, Toray will use commercially reasonable efforts to procure strategic supply for any raw materials that have a lead-time in excess of the binding period for a raw material that may be reasonably expected to be in short supply based on industry trends within the three (3) month forecasted quantity. Toray will be responsible for the costs and expenses associated with such safety stock.

7.4 **Minimum and Maximum Purchase of Toray Chips.** Bluejay shall purchase Toray Chips from Toray or its Affiliate in the quantity of minimum five thousand (5,000) Toray Chips but maximum ten thousand (10,000) for IL-6 for the 1st year starting from the acceptance date by Toray of the 1st milestone payment as set forth in Section 4.1.1. Bluejay shall use reasonable efforts to place POs of at minimum ten thousand (10,000) but maximum twenty thousand (20,000) Toray Chips per year during the 2nd and 3rd years. If Toray sells Toray Chips to Bluejay through one or more of its Affiliates, the term "Toray" in Articles 6, 7 and 8 shall read as "Toray and/or its Affiliates, as the case may be". Notwithstanding the foregoing, Bluejay will not abide by its purchase obligations defined in Sections 7.1 and 7.2, if Bluejay commences manufacturing of the Product by itself, provided, however, that Bluejay shall not cancel any PO which has already been placed by Bluejay.

7.5 **Price.** The price for Toray Chips to be purchased by Bluejay from Toray shall be Fifty U.S. Dollars (US$50) per piece on a FOB basis (INCOTERMS 2010) and shall not include any import duties or sales, use or excise taxes of any jurisdiction, all of which, if and to the extent applicable, are the responsibility of Bluejay. Detailed terms relating to the purchase and supply of Toray Chips shall be further discussed and determined by the Parties.

Article 8. ORDER AND PAYMENT

8.1 **Unit.** The unit of Toray Chips to be ordered for the 1st PO shall be limited to three hundred (300) Toray Chips for IL-6. For the 2nd PO and thereafter, the unit of Toray Chips to be ordered shall be no less than three hundred (300) Toray Chips. Each PO to be placed by Bluejay at Toray shall be one or multiple of such unit.

8.2 **Order.** Bluejay shall submit written POs for Toray Chips to Toray at least six (6) months prior to the delivery, provided, however, that the 1st PO shall be submitted at least six (6) weeks prior to the shipment. A PO shall become binding when Toray, accepts such PO by issuing to Bluejay a written confirmation, provided, however, that unless TORAY rejects such PO by written notice within fourteen (14) days after its receipt, a PO shall be deemed to have been accepted by Toray. Toray shall not unreasonably reject or withhold the acceptance of PO. No change to any PO or cancellation thereof may be made, except that the increase in the ordered quantity of Toray Chips, may be approved by Toray in writing. If any terms of a PO conflicts with this Agreement, the provision of this Agreement shall prevail.

8.3 **Payment.** Bluejay shall pay the price of Toray Chips in U.S. Dollar into the bank account designated by Toray by wire transfer within thirty (30) days of the acceptance date by Toray of PO. Bluejay and Toray shall be responsible for their own bank charges incurred for such transfer.

Article 9. **SHIPMENT AND INSPECTION**

9.1 **Shipment.** Subject to the receipt of the payment in Section 8.3, Toray shall deliver Toray Chips, by sea, on a FOB basis (INCOTERMS 2010) along with shipping documents. All Toray Chips to be delivered shall have a minimum of six (6) months of shelf-life remaining at the time of shipment.

9.2 **Inspection.** Bluejay shall inspect the Toray Chips within fourteen (14) days after its receipt of Toray Chips in accordance with the Exhibit D attached hereto. If Bluejay discovers any deficiency in quantity or inconformity with the Specifications of Toray Chips, Bluejay shall give written notice thereof to Toray within the aforesaid period or Bluejay shall be deemed to have accepted such Toray Chips and to have waived all claims for any deficiency in quantity and/or inconformity with the Specifications.

9.3 **Remedy.** For all undisputed claims under Section 9.2, Toray shall, at its sole discretion, replenish the shortage (in case of deficiency in quantity) or replace the defective Toray Chips at its expense or refund the purchase cost of such Toray Chips.

Article 10. **LABELING, PACKAGE, RE-PACKAGE AND STORAGE ETC.**

10.1 **Labeling, Packaging and Re-Packaging.** Bluejay shall, at its own cost and responsibility, design and manufacture the labels and packages for, and label and re-package Toray Chips for Commercial Sales in the Territory in conformance with the relevant legal requirements.

10.2 **Storage.** Bluejay shall take care of, store and keep Toray Chips delivered to it in good condition and free from all damage and contamination which might detract from the appearance or performance of Toray Chips.

Article 11. **MARKETING PLAN AND SALES FORECAST**

11.1 **Joint Marketing Planning Meeting.** The Parties shall arrange and hold meetings at least once every six (6) months, or at such other intervals as may be otherwise agreed to by the Parties in order to exchange information relating to the marketing of the Products in the Territory, to determine the marketing plans and sales forecasts of the Products, to discuss strategies relating the marketing of the Products, and to take such other actions as required under this Agreement (such meetings shall be referred to as **"Joint Marketing Planning Meeting").**

11.2 **Sales Reports.** Bluejay shall use reasonable efforts to realize the marketing plans and sales forecasts approved by the Joint Marketing Planning Meeting. Bluejay shall report monthly sales quantities and sales amounts of the Products in the Territory to Toray within fourteen (14) days from the end of the previous month and shall from time to time notify Toray of significant events in the Territory pertaining to the market situation, the competition, government controls, the general economy or any other major issues with regard to the market in the Territory.

Article 12. **REPRESENTATIONS AND WARRANTIES**

12.1 **General Warranties.** Each Party represents and warrants to the other that (i) it has the full right to enter into this Agreement and carry out its obligations hereunder, (ii) this Agreement constitutes its legal, valid and binding obligation, (iii) there are no agreements, commitments or obstacles, technical or legal, including patent rights of any third party, which could prevent it from carrying out all of its obligations hereunder, and (iv) the execution, delivery and performance of this Agreement will not constitute a violation or breach of any agreement or contract to which it is a Party or by which it is bound or the terms of any judicial or administrative decree or order to which it is subject.

12.2 **Toray's Warranty.** Toray warrants that each Toray Chip shall conform to the Specifications at the time of the completion of the inspection in accordance with Section 9.2 hereof. This warranty by Toray shall continue for a period of six (6) months from the date of delivery to Bluejay. Notwithstanding the foregoing, Toray shall not be liable for the quality of Toray Chips (i) when Toray Chips has been stored by Bluejay in improper conditions, or (ii) when the Product has been damaged during the labeling or re-packaging process.

Article 13. **DISCLAIMER**

13.1 **No Other Warranty.** EXCEPT AS SPECIFICALLY PROVIDED SECTION 12.2 ABOVE, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR ANY WARRANTY AGAINST INFRINGEMENT OF ANY THIRD PARTY PATENT.

13.2 **Amount Limit.** EACH PARTY'S LIABILITY ON ANY CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR CONNECTED WITH, OR RESULTING FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPLACEMENT, USE OR PERFORMANCE OF ANY TORAY CHIPS SHALL IN NO CASE EXCEED THE PRICE FOR SUCH TORAY CHIPS WHICH GIVES RISE TO THE CLAIM. FOR CLARITY, NOTWITHSTANDING ANYTHING CONTRARY HEREIN, BLUEJAY SHALL PAY THE FULL AMOUNT OF MILSTONES AND ROYALTIES TO TORAY IN ACCORDANCE WITH ARTICLE 4 OF THIS AGREEMENT.

13.3 **Indirect Damage.** NOTWITHSTANDING ANYTHING CONTRARY HEREIN, EXCEPT AS ARISING FROM A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 20 OR IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 14, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR (I) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES; (II) LOSS OF ANTICIPATED PROFIT OR REVENUE, LOSS OF USE, COST OF CAPITAL; OR (III) PROPERTY DAMAGE INDEPENDENT OF THE PRODUCTS AND LOSS ARISING OUT OF SUCH DAMAGES.

Article 14. INDEMNIFICATION

14.1 **Indemnification by Toray.** Toray shall indemnify, defend and hold harmless Bluejay and its Affiliates from and against any liabilities or damages or expenses in connection therewith (including reasonable attorney's fees and costs and other expenses of litigation) resulting from third party claims arising or resulting from (i) the material breach of this Agreement by Toray, or (ii) the intentional act or omission or the gross negligence of Toray, unless such liabilities, damages or expenses arise or result from the intentional act or omission or the gross negligence of Bluejay.

14.2 **Indemnification by Bluejay.** Bluejay shall indemnify, defend and hold harmless Toray and its Affiliates from and against any and all liabilities or damages or expenses in connection therewith (including reasonable attorney's fees and costs and other expenses of litigation) resulting from third party claims arising or resulting from (i) the material breach of this Agreement by Bluejay, or (ii) the intentional act or omission or the gross negligence of Bluejay, unless such liabilities, damages, or expenses arise or result from the intentional act or omission or the gross negligence of Toray.

14.3 **Insurance.** Each of the Parties shall maintain comprehensive general liability insurance, product liability insurance as well as other types of insurance in type and amount considered to be reasonable and prudent given the types of risks involved in the manufacturing, repackaging and distribution of the Product, as the case may be. Each Party shall maintain such coverage with third party commercial insurance carrier(s), for the term of this Agreement, and for the length of period required to cover the maximum limitation period for product liability claims in the Territory.

Article 15. INTELLECTUAL PROPERTY RIGHTS ETC.

15.1 **No Change.** Bluejay shall not alter Toray Chips furnished hereunder, or do anything other than labeling and repackaging such Toray Chips.

15.2 **Third Party Claim.** Both Parties shall cooperate in defending against any third party for any claim or dispute which may arise from or in connection with an infringement within the Territory of any trademark or any Intellectual Property Rights of a third party relating to the marketing, sales and distribution of the Product hereunder. Bluejay shall be solely liable if such claim or dispute arises from or in connection with the labeling or repackaging of Toray Chips.

15.3 **Notification.** During the term of this Agreement, if Bluejay, at any time, becomes aware of any infringement or threatened infringement by a third party of any Intellectual Property Rights of Toray Chips or the Product in the Territory, Bluejay shall promptly give notice to Toray and the Parties shall consult with each other as to the action to be taken. Bluejay further agrees to give Toray support in resisting such infringement or threatened infringement.

15.4 **Improvements and Inventions.** The Parties will discuss the feasibility of joint development of new Product from time to time. If Bluejay (including by its Affiliates, subcontractors, sublicensees, or their respective employees or agents) makes any Improvements based on Toray Know-How and/or Toray's Confidential Information, Bluejay shall notify Toray thereof immediately and Toray shall have the ownership of such Improvements. Ownership of all other inventions, discoveries, and developments, whether or not patentable (including any Improvements) discovered, generated, conceived or reduced to practice by or on behalf of Bluejay (including by its Affiliates, sublicensees, subcontractors or their respective employees or agents), in the course of the performance of this Agreement, including all rights, title and interest in and to the Intellectual Property Rights therein and thereto ("Inventions"), shall be jointly owned by Bluejay and Toray. The shares of joint ownership shall be determined in accordance with each Party's level of contribution in obtaining such Inventions.

Article 16. COMPLIANCE AND ETHICAL CONDUCT

16.1 It is the policy of both Parties to conduct businesses at all times in accordance with its highest standards of corporate and business ethics. Both Parties agree to comply with any and all laws, regulations and governmental orders of the jurisdictions relating to the execution and performance of this Agreement and with all other performance standards under or pursuant to this Agreement.

16.2 Bluejay shall be responsible for and fulfill any and all the legal obligations of an importer, a distributor and/or a holder of marketing authorization of medical products in the Territory including, but not limited to, establishing the documented procedures for the traceability of Toray Chips imported and the Product sold by Bluejay, which are required by any national or rural government of the Territory or any other competent authorities. Bluejay shall assist Toray in fulfilling the legal obligations of a supplier or a manufacturer of Toray Chips in the Territory which are required by any national or rural government of the Territory or any other competent authorities.

16.3 Either Party shall not offer, promise, or give money or any other thing of value to a Public Official in connection with this Agreement. "Public Official" in this Agreement means an officer, employee or any person acting for or on behalf of (i) any government or any department, agency or instrumentality thereof (including state-owned or state-controlled entities); or (ii) any public or international organization. If, during the term of this Agreement, either Party pays compensation or anything of value to a third party in relation to this Agreement, such Party shall, upon request from the other Party, promptly inform the other Party of (i) any information regarding such third party, (ii) any information regarding such payment, including the detail, purpose, and any other information which the other Party deems necessary.

Article 17. TERM AND TERMINATION

17.1 This Agreement shall become effective on Effective Date and continue in full force and effect until the expiration or the abandonment of the last of the Patents (whichever comes later), unless sooner terminated by mutual written consent of the Parties or terminated in accordance with Sections 17.2, 17.3 or 17.4. Notwithstanding the foregoing, Articles 12, 13, 14, 15.2, 15.4, 16, 18, 20, 24 and 25 and this Section 17.1 shall survive expiration or termination of this Agreement.

17.2 Either Party may terminate this Agreement by providing the other Party with a one (1) year prior written notice.

17.3 Either Party may terminate this Agreement forthwith by giving a written notice to the other Party if:

(a) the other Party fails to remedy any material breach of this Agreement within thirty (30) days after receiving a written notice requesting it to do so; or

(b) the other Party enters into any arrangement of composition with its creditors or goes into liquidation, insolvency, bankrupt, receivership or reorganization proceedings, except that, in case of non-voluntarily proceedings, when such non-voluntarily proceedings are not dismissed within ninety (90) days, or if the other Party becomes dissolved, or terminates its corporate existence by merger, consolidation or otherwise.

17.4 Toray may terminate this Agreement forthwith by giving a written notice to Bluejay if Bluejay makes any breach of its obligations under Section 16.3.

Article 18. **STEP AFTER TERMINATION**

18.1 Expiration or termination of this Agreement shall not release any Party from any liability which at the time of such expiration or termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such expiration or termination, nor shall any such expiration or termination affect in any way the survival of any right, duty or obligation of any Party which is stated in this Agreement to survive such expiration or termination.

18.2 Any termination of this Agreement under this Article shall not prejudice any right and remedy available to the terminating Party under this Agreement, law, trade custom or otherwise.

18.3 Upon expiration or termination of this Agreement, Bluejay shall:

(a) cease to label and repackage Toray Chips;

(b) upon Toray's request, promptly return to Toray all documents and materials containing Toray Know-How and its Confidential Information, including any duplicated copy thereof; and

(c) report its stock of the Products on hand at the time of such expiration or termination of this Agreement which are marketable to Toray; Toray and Bluejay shall discuss and determine as to the period of time when Bluejay may continue to sell the Products, and the return of Toray Chips to Toray if Toray so desires.

Article 19. **FORCE MAJEURE**

A Party shall not be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement and/or any PO, except for monetary payment, when such failure or delay is caused by or results from, directly or indirectly, act of God, fire, flood, tidal wave, landslide, pandemic, epidemic, quarantine, embargoes, government regulations, prohibitions or interventions, wars, acts of war (whether war be declared or not), act of terrorism, insurrection, riots, civil commotion, or any other cause beyond the reasonable control of the affected Party, provided that the affected Party shall promptly notify the other Party of the nature and effect of such event.

Article 20. **CONFIDENTIALITY AND LIMITATION ON USE**

20.1 Except as other permitted in this Article, during the term of this Agreement and for a period of five (5) years thereafter, each Party shall retain in confidence and use only for the purposes of this Agreement any Confidential Information supplied by or on behalf of the other Party to such Party under this Agreement. The obligations and duties under this Section 20.1 shall not apply to the information which:

(a) was in the public domain at the time of disclosure,

(b) was known by such Party prior to the date of disclosure by the other Party as evidenced by tangible records of such knowledge,

(c) becomes part of the public domain through no fault of such Party,

(d) is disclosed to such Party by a third party having a bona fide right to disclose such information, or

(e) is independently developed by such Party without using the Confidential Information of the other Party.

20.2 Notwithstanding the obligations of Section 20.1, (a) in the event a Party is required to make a disclosure of the other Party's Confidential Information in order to comply with any applicable law, the Party will, as soon as is practicable and legally permitted, notify the other Party of the disclosure or possible disclosure and will use all commercially reasonable efforts to provide the Confidential Information under conditions of confidentiality, or obtain a protective order protecting such information and (b) Bluejay's obligations of confidentiality and non-use with respect to Toray Know-How shall survive for the period that Toray Know-How retains its status as a trade secret under applicable law, even after five (5) years from the termination of this Agreement.

20.3 No announcement, news release, public statement, publication or other public presentation relating to the existence of this Agreement, the subject matter herein, or either Party's performance hereunder including any written or oral publication, any manuscript, abstract or the like which includes data or any other information generated and provided by the development effort hereunder, shall be made without the other Party's prior approval as to form and content.

Article 21. **NOTICE**

Any notice required or permitted under the terms of this Agreement, or any statue or law requiring the giving notice, may be delivered in person, or by registered air mail or registered courier service, if properly posted or sent to the relevant party at the address below or to such changed address as may be given by either Party to the other by such written notice. Any such notice shall be deemed to have been given upon receipt or upon the third (3rd) day after having been dispatched in the manner hereinbefore provided, whichever is earlier.

(a) To Bluejay at:

360 Massachusetts Avenue, Suite 203, Acton, MA 01720

Attention: Neil Dey

Telephone: [***]

E-Mail: Neil.dey@bluejaydx.com

(b) To Toray at: Pharmaceuticals & Medical Products Business Planning Dept.

2-1-1, Nihonbashi-Muromachi, Chuo-ku, Tokyo 103-8666 JAPAN

Attention: Michihiro Ohno, Deputy General Manager

Telephone: [***]

E-Mail: [***]

Article 22. **RELATIONSHIP**

The Parties shall be independent contractor to each other. Nothing herein shall be deemed to create the relationship of employer or employee, partnership, association or joint venture of any nature. Neither Party shall have the right, power or authority to assume or create any obligation, express or implied, for which the other Party may become liable.

Article 23. **NO ASSIGNMENT**

Neither Party may assign its rights or delegate its duties or obligations under this Agreement without the prior written consent of the other Party.

Article 24. **GOVERNING LAW**

This Agreement and all POs shall be governed by and construed according to the laws of New York without regard to the conflicts of law principles thereof. The United Nations Convention on the International Sale of Goods shall not be applicable to this Agreement and any PO.

Article 25. **DISPUTE RESOLUTION**

All disputes arising out of or in connection with this Agreement or any PO shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The venue of arbitration shall be in Tokyo, Japan if initiated by Bluejay and in New York, NY, the USA if initiated by Toray. The language of the arbitration shall be English. The award rendered by the arbitrator(s) shall be final and binding upon the parties. Notwithstanding aforementioned, either Party may apply to a court of competent jurisdiction for an order for lawful preservative or conservatory measures, including interim injunctive relief (whether prohibitory or mandatory) in cases of due urgency only.

Article 26. **ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements and understandings between the Parties relative to the matters described herein, except the confidentiality agreement executed between the Parties dated 22nd of April, 2020. Any amendment hereto must be in writing and signed by the duly authorized representative of both Parties.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the Effective Date.

Bluejay Diagnostics, Inc.	Toray Industries, Inc,
/s/ Neil Dey	/s/ Jun Hayakawa
Name: Neil Dey Title: Chief Executive Officer	Name: Jun Hayakawa Title: General Manager Pharmaceuticals & Medical Products Business Planning Dept.
Date: Oct. 05, 2020	Date: Sept. 30, 2020

Exhibit 10.3

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of July 1, 2021 (the "Effective Date"), by and between Bluejay Diagnostic, Inc., a Delaware corporation (the "Company") having its principal place of business at 360 Massachusetts Ave, Acton, MA 01720, and Neil Dey ("Executive", and the Company and Executive collectively referred to herein as the "Parties").

WITNESSETH:

WHEREAS, Executive has agreed to continue to serve as the Company's Chief Executive Officer and President and the Company would like to retain Executive as its Chief Executive Officer and President, and the Parties desire to enter into this Agreement embodying the terms of such employment; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises of the Parties contained herein, the Parties, intending to be legally bound, hereby agree as follows:

1. Title and Job Duties.

(a) Subject to the terms and conditions set forth in this Agreement, commencing on the Effective Date, the Company agrees to employ Executive as Chief Executive Officer and President. Executive shall report directly to the Company's Board of Directors (the "Board").

(b) Executive accepts such employment and agrees, during the term of his employment, to devote his full business and professional time and energy to the Company, and agrees faithfully to perform his duties and responsibilities in an efficient, trustworthy and business-like manner. Executive also agrees that the Board shall determine from time to time such other duties as may be assigned to him. Executive agrees to carry out and abide by such directions of the Board.

(c) Without limiting the generality of the foregoing, Executive shall not, without the written approval of the Company, render services of a business or commercial nature on his own behalf or on behalf of any other person, firm, or corporation, whether for compensation or otherwise, during his employment hereunder. The foregoing limitation shall not apply to Executive's involvement in associations, charities and service on another entity's board of directors, provided such involvement does not interfere or conflict with Executive's responsibilities (and as it pertains to any service on another entity's board of directors, provided such action is pre-approved by the Company).

2. Term. The term of employment under this Agreement (the "Term") shall commence on the Effective Date and shall continue until terminated by the Company or Executive in accordance with the terms and conditions set forth herein. Executive's employment with the Company shall continue to be "at will," meaning that Executive's employment may be terminated by the Company or Executive at any time and for any reason subject to the terms of this Agreement.

3. Salary and Additional Compensation

(a) Base Salary. During the Term, the Company shall pay to Executive a base salary ("Base Salary"), which shall initially be at the rate of $250,000 per year. The Board or the Compensation Committee of the Board (the "Compensation Committee") shall review Executive's Base Salary no less than annually (at the end of the Company's compensation year, which shall be its fiscal year) and may increase (but not decrease) such Base Salary during the Term in its sole discretion. Notwithstanding the foregoing, the Base Salary shall increase to $350,000 upon the closing of the Company's first underwritten public offering of its equity securities pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "IPO").

(b) Incentive Compensation. For each compensation year during the Term, Executive will be eligible to receive incentive compensation (the "Annual Bonus"). The final determination of the amount, if any, of the Annual Bonus will be made by, and in the sole discretion of, the Compensation Committee or the Board, based on goals and objectives previously approved by the Compensation Committee or the Board and communicated to Executive. The Annual Bonus, if any, shall be payable in a combination of cash and options to purchase Company common stock, as determined in the sole discretion of the Compensation Committee or the Board. Any options issued hereunder shall in all respects be subject to the terms and conditions of the Company's 2021 Equity Plan (the "Plan") and the applicable award agreement(s) (collectively with the Plan, the "Equity Documents"), and the value attributable to any options shall be determined in the sole discretion of the Compensation Committee or the Board. Notwithstanding the foregoing, Executive will not be eligible for an Annual Bonus until the closing of the IPO. The target Annual Bonus for the first year in which Executive is eligible for an Annual Bonus shall be 50 percent of Base Salary (pro-rated for any partial years). The Company will pay any Annual Bonus as soon as practicable after completion of the Company's audited financial statements for the calendar year in question, but in any event no later than March 15 of the following calendar year. Subject to Sections 6(c) and 7(a) below, Executive must be employed by the Company on the date such Annual Bonus is paid in order to earn or receive any Annual Bonus.

4. Expenses. In accordance with Company policy, the Company shall reimburse Executive for all reasonable association fees, professional related expenses (certifications, licenses and continuing professional education) and business expenses properly and necessarily incurred and paid by Executive in the performance of his duties under this Agreement, upon his presentment of detailed receipts in the form required by the Company's policy. Notwithstanding the foregoing, all expenses must be promptly submitted for reimbursement by Executive.

5. Benefits.

(a) Vacation. Executive shall be entitled to four weeks per year of vacation, sick and personal time and to utilize such vacation as Executive shall determine; provided however, that Executive shall evidence reasonable judgment with regard to appropriate vacation scheduling.

(b) Health Insurance and Other Plans. Executive shall be eligible to participate in the Company's medical, dental and other employee benefit programs, if any, that are provided by the Company for its employees at Executive's level in accordance with the provisions of any such plans, as the same may be in effect from time to time.

6. Termination.

(a) Termination at the Company's Election.

(i) For Cause. At the election of the Company, Executive's employment may be terminated at any time for Cause (as defined below) immediately upon written notice to Executive given pursuant to Section 12 of this Agreement. For purposes of this Agreement, "Cause" for termination shall mean: (i) conduct by Executive constituting a material act of misconduct in connection with the performance of Executive's duties, including, without limitation, misappropriation of funds or property of the Company or any of its subsidiaries or affiliates; (ii) the commission by Executive of any felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, or any conduct by Executive that would reasonably be expected to result in material injury or reputational harm to the Company or any of its subsidiaries and affiliates if Executive was retained in his position; (iii) continued material underperformance by Executive of Executive's duties hereunder (other than by reason of Executive's physical or mental illness, incapacity or disability), which has continued for more than thirty (30) days following written notice of such performance concerns from the Board; (iv) a material breach by Executive of any material provision contained in this Agreement (including, without limitation, a breach of Sections 8 and/or 9), or in any material agreement between the Parties; (v) a material violation by Executive of the Company's written employment policies which continued for fifteen (15) business days following written notice of such material violation and an opportunity to cure, if curable; or (vi) failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation.

(ii) Upon Disability or Without Cause; Death. At the election of the Company, Executive's employment may be immediately terminated: (A) should Executive have a physical or mental impairment that substantially limits a major life activity and Executive is unable to perform the essential functions of his job with or without reasonable accommodation ("Disability"); or (B) at any time without Cause. Executive's employment with the Company will end upon Executive's death.

(b) Termination at Executive's Election. Notwithstanding anything contained elsewhere in this Agreement to the contrary, Executive may terminate his employment hereunder at any time and for any reason, upon thirty (30) days' prior written notice given pursuant to Section 12 of this Agreement ("Voluntary Resignation"); provided that in the event that Executive gives written notice of his Voluntary Resignation to the Company, the Company may unilaterally accelerate Executive's termination date and such acceleration shall not result in a termination by the Company for purposes of this Agreement.

(c) Termination in General; Resignation of Other Positions. If Executive's employment with the Company terminates for any reason, the Company will pay or provide to Executive: (i) any unpaid Base Salary through the date of employment termination, (ii) any earned but unpaid Annual Bonus for the fiscal year prior to the fiscal year in which the termination occurs (payable at the time the bonuses are paid to employees generally), (iii) any accrued but unused vacation or paid time off in accordance with the Company's policy, (iv) reimbursement for any unreimbursed business expenses incurred through the termination date, to the extent reimbursable in accordance with Section 4, and (v) all vested benefits (if any) to which Executive is entitled under the terms of any benefit plan, in accordance with the terms of such benefit plans. To the extent applicable, Executive shall be deemed to have resigned from all officer and board member positions that Executive holds with the Company or any of its respective subsidiaries and affiliates upon the termination of Executive's employment for any reason. Executive shall execute any documents in reasonable form as may be requested to confirm or effectuate any such resignations.

7. Severance.

(a) Subject to Sections 7(b) and 9(c) below, if Executive's employment is terminated by the Company without Cause (other than due to death or Disability), Executive shall be entitled to receive a cash severance payment equal to (i) twelve months of Executive's Base Salary at the time of termination; and (ii) a pro rata portion of the target Annual Bonus for the year in which such termination occurs (provided with respect to this subsection (ii) that such termination occurs after the closing of the IPO). Such severance payment shall be made over the twelve month period, as applicable, in accordance with the Company's normal payroll policy, provided that prior to the initial payment, and as a condition of Executive's receipt of any severance, Executive must execute, deliver, and not revoke a separation agreement and release (the "Separation Agreement") in a form and manner reasonably acceptable to the Company, which shall include, without limitation, a general release of the Company, its parents, subsidiaries and affiliates and each of its officers, directors, employees, agents, successors and assigns, and such other persons and/or entities as the Company may determine, as well as a reaffirmation of Executive's restrictive covenants obligations (including without limitation pursuant to Sections 8 and 9 of this Agreement), and shall provide that if Executive breaches any of his restrictive covenants obligations, all payments of severance shall immediately cease. The Separation Agreement must be executed and become irrevocable all within 60 days after Executive's termination date (or such shorter period as set forth in the Separation Agreement).

(b) Notwithstanding the foregoing, (i) any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code and the regulations and official guidance issued thereunder ("Section 409A")) that is/are required to be made to Executive hereunder as a "specified employee" (as defined under Section 409A) as a result of such employee's "separation from service" (within the meaning of Section 409A) shall be delayed for the first six (6) months following such separation from service (or, if earlier, the date of death of the specified employee) and shall instead be paid upon expiration of such six (6) month delay period; and (ii) for purposes of any such payment that is subject to Section 409A, if Executive's termination of employment triggers the payment of "nonqualified deferred compensation" hereunder, then Executive will not be deemed to have terminated employment until Executive incurs a "separation from service" within the meaning of Section 409A.

8. Nondisclosure/Confidentiality.

(a) Confidential Information. Executive acknowledges, understands and agrees that, in the course of Executive's employment Executive will be informed of, utilize on the Company's and its subsidiaries' behalf, develop and/or have access to information concerning the Company and its subsidiaries, affiliates and related entities (the "Protected Parties") and their respective businesses, customers, business relationships, plans, technology, trade secrets, financial, and business and legal affairs which the Protected Parties have not released to the general public, is not generally known to the public or in the industry, has been and will be developed by the Company or other Protected Party at great expense, is a valuable competitive asset of Protected Party, constitutes a "trade secret" under applicable law and/or the disclosure of which or use of which (other than for the benefit of a Protected Party) could result in a competitive disadvantage to a Protected Party or otherwise could negatively affect the Company or other Protected Party (collectively, "Confidential Information"). Executive understands that all Confidential Information (and all materials that constitute, comprise or contain such Information) is and will be the exclusive property of the Company or other Protected Party, as applicable. By way of illustration and not limitation, Confidential Information includes such information and materials regarding or constituting: (i) *corporate and legal information*, including business plans, strategies, developments, methods, policies, resolutions, negotiations, contracts and litigation; (ii) *marketing information*, including strategies, methods, customer identities or other information about customers, prospect identities or other information about prospects, or market analyses or projections; (iii) *customer and client information*, including prices, terms and conditions of the Protected Parties' arrangements or contracts with their clients and customers, the identities, needs, preferences and requirements of the Protected Parties' respective customers and clients and their use of the Protected Parties' products and/or services, the nature, extent and particulars of the business dealings between the Protected Parties and their respective clients and customers, client and customer lists and contact information, and such other information provided to the Company or other Protected Party by their respective clients and customers under obligations of confidentiality; (iv) *financial information*, including cost and performance data, debt arrangements, equity structure, investors and holdings, purchasing, pricing and sales data and price lists; and (v) *operational, technological, product and service information*, including plans, specifications, manuals, forms, templates, software, source code, object code, designs, research, development, methods, procedures, formulas, discoveries, inventions, improvements, intellectual property, innovations, concepts and ideas, and product and/or service specifications, features, advantages, disadvantages and/or limitations; and (vi) *personnel information*, including personnel lists, reporting or organizational structure, resumes, personnel data, performance evaluations and termination arrangements or documents. Confidential Information also includes (x) any and all information which the Company instructs Executive to keep confidential and/or not to discuss with or disclose to anyone outside the Company (including customers); and (y) information received in confidence by the Protected Parties from their respective customers or suppliers or other third parties. Notwithstanding the foregoing, Confidential Information does not include any information that is in the public domain, unless due to breach of Executive's duties and restrictions under Section 8(b).

(b) Confidentiality. Executive understands and agrees that Executive's employment with the Company will create a relationship of confidence and trust between Executive and the Company with respect to all Confidential Information. At all times, both during Executive's employment with the Company and after Executive's termination of employment, Executive will keep in confidence and trust all such Confidential Information, and will not use or disclose any such Confidential Information without the written consent of the Company, except as may be necessary in the ordinary course of performing Executive's duties to the Company, or as may be required by applicable law. For the avoidance of doubt, Executive understands that pursuant to the federal Defend Trade Secrets Act of 2016, Executive shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Executive further understands that nothing contained in this Agreement limits Executive's ability to (A) communicate with any federal, state or local governmental agency or commission, including to provide documents or other information, without notice to the Company, or (B) share compensation information concerning Executive or others, except that this does not permit Executive to disclose compensation information concerning others that Executive has obtained because Executive's job responsibilities require or allow access to such information.

(c) Documents, Records, and Other Company Property. All documents, records, files, data, computer files, software, all copies of the foregoing (in any form or format, whether hard-copy, electronic, digital or otherwise), apparatus, computers, smartphones, personal data assistants (PDAs) and similar devices, equipment, keys, access cards, credit cards, and other physical property, whether or not pertaining to, constituting or containing Confidential Information, which are furnished to Executive by the Company or its subsidiaries, to which Executive otherwise has access, or which are produced by Executive in connection with Executive's employment will be and remain the sole property of the Company. Executive will return to the Company or destroy all such materials and property (and all copies) as and when requested by the Company. In any event, Executive will return all such materials and property in Executive's possession, custody or control immediately upon any termination of Executive's employment for any reason (whether by the Company or Executive).

(d) Work Product. As used in this Agreement, the term "Work Product" means all inventions, innovations, improvements, technical information, systems, software developments, methods, designs, analyses, drawings, reports, service marks, trademarks, trade names, logos and all similar or related information (whether patentable or unpatentable, copyrightable, registerable as a trademark, reduced to writing, or otherwise), or any part thereof, which relates to the Company's or any of its affiliates' actual or anticipated business, research and development or existing or future products or services and which are or were conceived, developed or made by Executive (whether or not during usual business hours, whether or not by the use of the facilities of the Company or any of its affiliates, and whether or not alone or in conjunction with any other person) while employed by the Company together with all patent applications, letters patent, trademark, trade name and service mark applications or registrations, copyrights and reissues thereof that may be granted for or upon any of the foregoing. All Work Product that Executive may discover, invent or originate while Executive was an employee of the Company (whether prior to or following the Effective Date of this Agreement) shall be the exclusive property of the Company, and its affiliates, as applicable, and Executive hereby assigns all of Executive's right, title and interest in and to such Work Product to the Company or its applicable affiliate, including all intellectual property rights therein. Executive shall promptly disclose all Work Product to the Company, shall execute at the request of the Company any assignments or other documents the Company may deem necessary to protect or perfect its (or any of its affiliate's, as applicable) rights therein, and shall assist the Company, at the Company's expense, in obtaining, defending and enforcing the Company's (or any of its affiliate's, as applicable) rights therein. Executive hereby appoints the Company as Executive's attorney-in-fact to execute on Executive's behalf any assignments or other documents deemed necessary by the Company to protect or perfect the Company's (and any of its affiliate's, as applicable) rights to any Work Product.

(e) Litigation and Regulatory Cooperation. During and after Executive's employment, Executive shall cooperate fully with the Company in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company which relate to events or occurrences that transpired while Executive was employed by the Company. Executive's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after Executive's employment, Executive also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while Executive was employed by the Company. The Company shall reimburse Executive for any reasonable out-of-pocket expenses incurred in connection with Executive's performance of obligations pursuant to this Paragraph.

9. Non-Competition; Non-Solicitation.

(a) Executive understands and acknowledges that Executive has been, and will continue to be, a key employee with the Company, and has been, and will continue to be, placed in an executive position which includes Executive's involvement and discretion in decisions and matters of importance for the Company. Executive understands that the nature of Executive's position has and will continue to give Executive access to and knowledge of Confidential Information and places Executive in a position of trust and confidence with the Company. Executive understands and acknowledges that the Company's ability to safeguard its Confidential Information for the exclusive knowledge and use of the Company is of great competitive importance and commercial value to the Company, and that improper use or disclosure by Executive is likely to result in unfair or unlawful competitive activity. Executive acknowledges and agrees that: (i) Executive received this Agreement at least ten (10) business days before the Effective Date of this Agreement; (ii) this Section 9 is in exchange for, among other things, the Annual Bonus and severance opportunities contained in this Agreement, which Executive acknowledges and agrees are fair and reasonable consideration independent from the continuation of Executive's employment; and (iii) Executive has been advised by the Company that Executive has the right to consult with counsel prior to signing this Agreement.

(b) Because of the Company's legitimate business interest as described herein, and the good and valuable consideration offered to Executive, at all times during the Restricted Period (as hereinafter defined), Executive (i) will refrain from directly or indirectly employing, attempting to employ, recruiting, hiring or otherwise soliciting, inducing or influencing any Company Personnel (as hereinafter defined) to leave employment or service with any of the Protected Parties; (ii) will refrain from directly or indirectly calling upon, soliciting, accepting business from or diverting away any Business Relationship (as hereinafter defined); and (iii) will not, directly or indirectly, encourage any Business Relationship to terminate or otherwise modify adversely its business relationship with any of the Protected Parties.

(c) Unless (i) the Company terminates the employment of Executive without Good Cause (as defined below), including as a result of a layoff, or (ii) the Company waives the restrictions on post-employment activities set forth in this Section 9(c), then, the Company shall make garden leave payments to Executive for the post-employment portion of the Restricted Period (but for not more than 12 months following the end of such employment) at the rate of 50% of the highest annualized Base Salary paid to Executive by the Company within the two-year period preceding the last day of Executive's employment with the Company ("Garden Leave Pay"), and in exchange, Executive agrees that Executive will not, directly or indirectly, whether as owner, partner, shareholder, director, manager, consultant, agent, employee, co-venturer or otherwise, anywhere in the Restricted Territory (as hereafter defined), engage or otherwise participate in any Competing Business at any time during the Restricted Period. Executive hereby acknowledges that this covenant is necessary because the Company's legitimate business interests cannot be adequately protected solely by the other covenants in this Agreement. Executive further acknowledges and agrees that any Garden Leave Pay received pursuant to this Section 9(c) in any calendar year shall reduce (and shall not be in addition to) any severance or separation pay that Executive is otherwise entitled to receive from the Company in such calendar year pursuant to any agreement, plan or otherwise, including, if applicable, any payments that may be owing to Executive under Section 7(a) of this Agreement.

(d) Executive understands that the restrictions set forth in this Section 9 are intended to protect the interest of each of the Protected Parties in its Confidential Information, goodwill and established employee, customer, supplier, consultant and vendor relationships, and agrees that such restrictions are reasonable and appropriate for this purpose.

(e) For purposes of this Section 9, the following terms shall have the meanings ascribed to them below:

i. "Business Relationship" shall mean (A) any customer, supplier, consultant or vendor of any Protected Party; and/or (B) any prospective customer of any Protected Party with whom or which Executive had contact or about whom or which Executive learned Confidential Information during Executive's employment with the Company.

ii. "Company Personnel" shall mean any employee, contractor or consultant of the Protected Parties who either (A) is employed or engaged by any of the Protected Parties or (B) was employed or engaged by the Protected Parties within six (6) months prior to any of the restricted activities described in Section 9(b(i).

iii. "Competing Business" shall mean (i) the business of developing and offering point-of-care medical diagnostics tests and (ii) any other business carried on or in an active phase of development by the Company and its direct or indirect subsidiaries as of Executive's termination date (irrespective of whether such business is carried on by the Company and/or any of its subsidiaries or affiliates as of the Effective Date).

iv. "Good Cause" shall mean the termination of Executive's employment by the Company either (i) for Cause as provided in Section 6(a)(i) of this Agreement, or (ii) due to the Company's reasonable and good faith dissatisfaction with Executive's job performance, conduct or behavior.

v. "Restricted Period" shall mean the period of Executive's employment with the Company and continuing through twelve (12) months after Executive's termination date.

vi. "Restricted Territory" shall mean (i) the United States and (ii) any other jurisdiction in or region of the world in which the Company is doing business during the Term.

10. Representation and Warranty. Executive hereby acknowledges and represents that he has had the opportunity to consult with legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein. Executive represents and warrants that Executive has provided the Company a true and correct copy of any agreements that purport: (a) to limit Executive's right to be employed by the Company; (b) to prohibit Executive from engaging in any activities on behalf of the Company; or (c) to restrict Executive's right to use or disclose any information while employed by the Company. Executive further represents and warrants that Executive will not use on the Company's behalf any information, materials, data or documents belonging to a third party that are not generally available to the public, unless Executive has obtained written authorization to do so from the third party and provided such authorization to the Company. In the course of Executive's employment with the Company, Executive is not to breach any obligation of confidentiality that Executive has with third parties, and Executive agrees to fulfill all such obligations during Executive's employment with the Company. Executive further agrees not to disclose to the Company or use while working for the Company any trade secrets belonging to a third party.

11. Remedies. The Executive acknowledges that the restrictions contained in this Agreement are reasonable and necessary to protect the Company's legitimate business interests and that any violation of the provisions contained herein would result in irreparable injury to the Company and that monetary damages may not be sufficient to compensate the Company for any economic loss which may be incurred by reason of breach of the restrictions contained herein. In the event of a breach or a threatened breach by the Executive of any provision contained herein, the Company shall be entitled to a temporary restraining order and injunctive relief restraining the Executive from the commission of any breach, shall not be required to provide any bond or other security in connection with obtaining any such equitable remedy and shall be entitled to recover the Company's reasonable attorneys' fees, costs and expenses related to the breach or threatened breach. Nothing contained in this Section 11 shall be construed as prohibiting the Company from pursuing any other remedies available to it for any breach or threatened breach, including, without limitation, the recovery of money damages. In the event of a breach by Executive of any covenants contained herein, the term of such covenant shall be tolled until such breach has been duly cured.

12. Notice. Any notice or other communication required or permitted to be given to the Parties shall be deemed to have been given if either personally delivered, or if sent for next-day delivery by nationally recognized overnight courier, and addressed as follows:

If to Executive, to:

Neil Dey
[**]
[**]

If to the Company, to:

Bluejay Diagnostic, Inc.,
360 Massachusetts Ave
Acton, MA 01720
Attention: Board of Directors
With a copy to:

Goodwin Procter LLP
100 Northern Avenue
Boston, MA 02210
Attention: Christopher Denn

13. Severability. If any provision of this Agreement, or any part thereof, is held by a court or other authority of competent jurisdiction to be invalid or unenforceable, the parties agree that the court or authority making such determination will have the power to, and it is the parties' express intent that the court shall, reduce the duration or scope of such provision or to delete specific words or phrases as necessary (but only to the minimum extent necessary) to cause such provision or part to be valid and enforceable to the fullest extent permitted by applicable law. If such court or authority does not have the legal authority to take the actions described in the preceding sentence, the parties agree to negotiate in good faith a modified provision that would, in so far as possible, reflect the original intent of this Agreement without violating applicable law.

14. Enforceability. If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. Withholding. The Company may withhold from any payment that it is required to make under this Agreement amounts sufficient to satisfy applicable withholding requirements under any federal, state or local law. Payments under this Agreement shall be in amounts net of any such deductions or withholdings. Nothing in this Agreement shall be construed to require the Company to make any payments to compensate Executive for any adverse tax effect associated with any payments or benefits or for any deduction or withholding from any payment or benefit.

16. Survival. Executive understands that Executive's obligations under this Agreement (including those under Sections 8 and 9) will continue in accordance with its express terms regardless of any changes in Executive's title, position, duties, salary, compensation or benefits or other terms and conditions of employment. The provisions of this Agreement shall survive the termination of this Agreement and/or the termination of Executive's employment to the extent necessary to effectuate the terms contained herein.

17. Directors' and Officers' Liability Insurance. The Company agrees that Executive will be named as a covered officer by any "directors and officers" insurance policies as may be in effect from time to time.

18. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof. Any action, suit or other legal proceeding that is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be submitted to the exclusive jurisdiction of any state or federal court in Middlesex County, Massachusetts.

19. Waiver. The waiver by either Party of a breach of any provision of this Agreement shall not be or be construed as a waiver of any subsequent breach. The failure of a Party to insist upon strict adherence to any provision of this Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that provision or any other provision of this Agreement. Any such waiver must be in writing, signed by the Party against whom such waiver is to be enforced; provided, however, that notwithstanding the foregoing, Executive acknowledges and agrees that the Company's failure to make Garden Leave Pay payments as set forth in Section 9(c) shall be deemed a waiver of Executive's noncompetition obligations under Section 9(c). The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

20. Assignment. Neither the Company nor Executive may make any assignment of this Agreement or any interest herein, by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, the Company may assign its rights under this Agreement without any such further consent of Executive to any successor in interest to the Company including in the event that the Company shall effect a reorganization, consolidate with or merge into any other corporation, limited liability company, partnership, organization or other entity, or transfer all or substantially all of its properties or assets to any other corporation, limited liability company, partnership, organization or other entity, in which event all references to the "Company" shall be deemed to mean the assignee or a designated affiliate of the assignee. Executive hereby consents to such assignment as set forth in the immediately preceding sentence and further acknowledges and agrees that no further consent by Executive is necessary to make such assignment. This Agreement shall inure to the benefit of and be binding upon the Company and Executive, and their respective successors, executors, administrators, heirs and permitted assigns.

21. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the parties and the Company's respective successors and permitted assigns and shall not confer upon any other person any remedy, claim, liability, reimbursement, or other right. The Agreement is not intended and shall not be construed to create any third party beneficiaries or to provide to any third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

22. Entire Agreement. This Agreement embodies all of the representations, warranties, covenants, understandings and agreements between the Parties relating to Executive's employment with the Company. No other representations, warranties, covenants, understandings, or agreements exist between the Parties relating to Executive's employment, provided that the Equity Documents remain in full effect. This Agreement shall supersede all prior agreements, written or oral, relating to Executive's employment. This Agreement may not be amended or modified except by a writing signed by the Parties.

23. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered on the date first written above.

Bluejay Diagnostic, Inc.

By: /s/ Donald Chase
Name: Donald Chase
Title: Director and Chair of Compensation Committee

Agreed to and Accepted:

Neil Dey

/s/ Neil Dey

Date: 7/14/21

Exhibit 10.4

RESTATED EMPLOYMENT AGREEMENT

This RESTATED EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of July 1, 2021 (the "Effective Date"), by and between Bluejay Diagnostic, Inc., a Delaware corporation (the "Company") having its principal place of business at 360 Massachusetts Ave, Acton, MA 01720, and Gordon Kinder ("Executive", and the Company and the Executive collectively referred to herein as the "Parties"). This Agreement replaces and supersedes the Employment Agreement between the Parties dated July 1, 2021.

WITNESSETH:

WHEREAS, the Executive has agreed to serve as the Company's Chief Financial Officer and Vice President and the Company would like to retain Executive as its Chief Financial Officer and Vice President, and the Parties desire to enter into this Agreement embodying the terms of such employment; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises of the Parties contained herein, the Parties, intending to be legally bound, hereby agree as follows:

1. Title and Job Duties.

(a) Subject to the terms and conditions set forth in this Agreement, commencing on the Effective Date, the Company agrees to employ Executive as Chief Financial Officer and Vice President. Executive shall report directly to the Company's Chief Executive Officer.

(b) Executive accepts such employment and agrees, during the term of his employment, to devote his full business and professional time and energy to the Company, and agrees faithfully to perform his duties and responsibilities in an efficient, trustworthy and business-like manner. Executive also agrees that the Company's Chief Executive Officer shall determine from time to time such other duties as may be assigned to him. Executive agrees to carry out and abide by such directions of the Company's Chief Executive Officer.

(c) Without limiting the generality of the foregoing, Executive shall not, without the written approval of the Company, render services of a business or commercial nature on his own behalf or on behalf of any other person, firm, or corporation, whether for compensation or otherwise, during his employment hereunder. The foregoing limitation shall not apply to Executive's involvement in associations, charities and service on another entity's board of directors, provided such involvement does not interfere with Executives responsibilities (and as it pertains to any service on another entity's board of directors, provided such action is pre-approved by the Company).

2. Salary and Additional Compensation.

(a) Base Salary. During the Term, the Company shall pay to Executive an annual base salary ("Base Salary"), which shall initially be $232,000. The Board of Directors (the "Board") shall review the Executive's Base Salary no less than annually (at the end of the Company's compensation year, which shall be its fiscal year) and may increase (but not decrease) such Base Salary during the term of this Agreement. The Base Salary shall increase to $250,000 upon the completion of the Company's initial public offering ("IPO").

(b) Annual Bonus. For each compensation year during the Term, Executive will be entitled to receive an annual bonus (the "Annual Bonus"), within ninety (90) days of the completion of such year. The final determination of the amount, if any, of the Annual Bonus will be made by, and in the sole discretion of, the Compensation Committee of the Board (or the Board, if such committee has been dissolved), based on goals and objectives previously approved by the Compensation Committee of the Board (or the Board, if such committee has been dissolved). The target Annual Bonus for the 2021 compensation year is 40% of Base Salary (pro rated for partial years). The Annual Bonus shall be payable in a combination of cash and options to purchase Company common stock, as determined in the sole discretion of the Compensation Committee of the Board (or the Board, if such committee has been dissolved). Any options issued hereunder shall in all respects be subject to the terms and conditions of the Company's 2021 Equity Plan (the "Plan"), and the value attributable to any options shall be determined in the sole discretion of the Compensation Committee of the Board (or the Board, if such committee has been dissolved). No Annual Bonus shall be payable to Executive until the completion of the IPO.

(c) Option Grant. On the Effective Date, Executive will be granted a stock option to purchase 40,000 shares of Company common stock at an exercise price of $3.50 per share (the "Option Grant"). The Option Grant shall have a term of ten years and shall vest 6,667 shares on December 31, 2021, 6,666 shares on July 7, 2022, 13,333 shares on July 7, 2023, and 13,334 on July 7, 2024; provided Executive remains continuously employed by Company on and does not resign prior to each such vesting date. The Option Grant shall in all respects be subject to the terms and conditions of the Plan.

3. Expenses. In accordance with Company policy, the Company shall reimburse Executive for all reasonable association fees, professional related expenses (certifications, licenses and continuing professional education) and business expenses properly and necessarily incurred and paid by Executive in the performance of his duties under this Agreement, upon his presentment of detailed receipts in the form required by the Company's policy. Notwithstanding the foregoing, all expenses must be promptly submitted for reimbursement by Executive. In no event shall any reimbursement be paid by the Company after the end of the year following the year in which the expense is incurred by Executive.

4. Benefits.

(a) Vacation. Executive shall be entitled to three weeks per year of vacation, sick and personal time and to utilize such vacation as the Executive shall determine; provided however, that Executive shall evidence reasonable judgment with regard to appropriate vacation scheduling.

(b) Health Insurance and Other Plans. Executive shall be eligible to participate in the Company's medical, dental and other employee benefit programs, if any, that are provided by the Company for its employees at Executive's level in accordance with the provisions of any such plans, as the same may be in effect from time to time.

5. Term. The term of employment under this Agreement (the "Term") shall commence on the Effective Date and shall continue until terminated by the Company or Executive in accordance with the terms and conditions set forth herein.

6. Termination.

(a) Termination at the Company's Election.

(i) For Cause. At the election of the Company, Executive's employment may be terminated at any time for Cause (as defined below) upon written notice to Executive given pursuant to Section 12 of this Agreement. For purposes of this Agreement, "Cause" for termination shall mean that Executive: (A) pleads "guilty" or "no contest" to, or is convicted of an act which is defined as a felony under federal or state law, or is indicted or formally charged with acts involving criminal fraud or embezzlement; (B) in carrying out his duties, engages in conduct that constitutes gross negligence or willful misconduct; (C) engages in substantiated fraud, misappropriation or embezzlement against the Company; (D) engages in any inappropriate or improper conduct that causes material harm to the reputation of the Company; or (E) materially breaches any term of this Agreement. With respect to subsection (E) of this section, to the extent such material breach may be cured, the Company shall provide Executive with written notice of the material breach and Executive shall have twenty (20) days to cure such breach.

(ii) Upon Disability or Without Cause; Death. At the election of the Company, Executive's employment may be terminated: (A) should Executive have a physical or mental impairment that substantially limits a major life activity and Executive is unable to perform the essential functions of his job with or without reasonable accommodation ("Disability"); or (B) at any time without Cause. Executive's employment with the Company will end upon Executive's death.

(b) Termination at Executive's Election. Notwithstanding anything contained elsewhere in this Agreement to the contrary, Executive may terminate his employment hereunder at any time and for any reason, upon thirty (30) days' prior written notice given pursuant to Section 12 of this Agreement ("Voluntary Resignation"), provided that upon notice of resignation, the Company may terminate Executive's employment immediately.

(c) Termination in General. If Executive's employment with the Company terminates for any reason, the Company will pay or provide to Executive: (i) any unpaid Base Salary through the date of employment termination, (ii) any unpaid Annual Bonus for the fiscal year prior to the fiscal year in which the termination occurs (payable at the time the bonuses are paid to employees generally), (iii) any accrued but unused vacation or paid time off in accordance with the Company's policy, (iv) reimbursement for any unreimbursed business expenses incurred through the termination date, to the extent reimbursable in accordance with Section 3, and (v) all other payments or benefits (if any) to which Executive is entitled under the terms of any benefit plan or arrangement.

7. Severance.

(a) Subject to Section 7(b) below, if Executive's employment is terminated prior to the end of the Term by the Company without Cause (other than due to death or Disability), Executive shall be entitled to receive a cash severance payment equal to (i) three months of Executive's Base Salary at the time of termination, which shall increase to six months of Executive's Base Salary if such termination occurs after one year from the Effective Date; and (ii) a pro rata portion of the target Annual Bonus for the year in which such termination occurs. Such severance payment shall be made over the three or six month period, as applicable, in accordance with the Company's normal payroll policy, provided that prior to the initial payment, the Executive has executed and delivered to the Company, and has not revoked a general release of the Company, its parents, subsidiaries and affiliates and each of its officers, directors, employees, agents, successors and assigns, and such other persons and/or entities as the Company may determine, in a form reasonably acceptable to the Company. Such general release shall be delivered on or about the date of termination and must be executed within 21 days of termination.

(b) Notwithstanding the foregoing, (i) any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code and the regulations and official guidance issued thereunder ("Section 409A")) that is/are required to be made to Executive hereunder as a "specified employee" (as defined under Section 409A) as a result of such employee's "separation from service" (within the meaning of Section 409A) shall be delayed for the first six (6) months following such separation from service (or, if earlier, the date of death of the specified employee) and shall instead be paid upon expiration of such six (6) month delay period; and (ii) for purposes of any such payment that is subject to Section 409A, if the Executive's termination of employment triggers the payment of "nonqualified deferred compensation" hereunder, then the Executive will not be deemed to have terminated employment until the Executive incurs a "separation from service" within the meaning of Section 409A.

8. Confidentiality Agreement.

(a) Executive understands that during his employment he will have access to unpublished and otherwise confidential information both of a technical and non-technical nature, relating to the business of the Company and any of its parents, subsidiaries, divisions, affiliates (collectively, "Affiliated Entities"), or clients, including without limitation any of their actual or anticipated business, research or development, any of their technology or the implementation or exploitation thereof, including without limitation information Executive and others have collected, obtained or created, information pertaining to patent formulations, vendors, prices, costs, materials, processes, codes, material results, technology, system designs, system specifications, materials of construction, trade secrets and equipment designs, including information disclosed to the Company by others under agreements to hold such information confidential (collectively, the "Confidential Information"). Executive agrees to observe all Company policies and procedures concerning such Confidential Information. Executive further agrees not to disclose or use, either during his employment or at any time thereafter, any Confidential Information for any purpose, including without limitation any competitive purpose, unless authorized to do so by the Company in writing, except that he may disclose and use such information when necessary in the performance of his duties for the Company. Executive's obligations under this Agreement will continue with respect to Confidential Information, whether or not his employment is terminated, until such information becomes generally available from public sources through no action of Executive. Notwithstanding the foregoing, however, Executive shall be permitted to disclose Confidential Information as may be required by a subpoena or other governmental order, provided that he first notifies promptly the Company of such subpoena, order or other requirement and allows the Company the opportunity to obtain a protective order or other appropriate remedy. Nothing herein shall prohibit Employee from (i) reporting a suspected violation of law to any governmental or regulatory agency and cooperating with such agency, or from receiving a monetary recovery for information provided to such agency, (ii) testifying truthfully under oath pursuant to subpoena or other legal process or (iii) making disclosures that are otherwise protected under applicable law or regulation.

(b) During Executive's employment, upon the Company's request, or upon the termination of his employment for any reason, Executive will promptly deliver to the Company all documents, records, files, notebooks, manuals, letters, notes, reports, customer and supplier lists, cost and profit data, e-mail, apparatus, computers, cell phones, tablets, hardware, software, drawings, and any other material of the Company or any of its Affiliated Entities or clients, including all materials pertaining to Confidential Information developed by Executive or others, and all copies of such materials, whether of a technical, business or fiscal nature, whether on the hard drive of a laptop or desktop computer, in hard copy, disk or any other format, which are in Executive's possession, custody or control.

(c) Executive will promptly disclose to the Company any idea, invention, discovery or improvement, whether patentable or not ("Creations"), conceived or made by him alone or with others at any time during his employment. Executive agrees that the Company owns all such Creations, conceived or made by Executive alone or with others at any time during his employment, and Executive hereby assigns and agrees to assign to the Company all rights he has or may acquire therein and agrees to execute any and all applications, assignments and other instruments relating thereto which the Company deems necessary or desirable. These obligations shall continue beyond the termination of his employment with respect to Creations and derivatives of such Creations conceived or made during his employment with the Company. Executive understands that the obligation to assign Creations to the Company shall not apply to any Creation which is developed entirely on his own time without using any of the Company's equipment, supplies, facilities, and/or Confidential Information unless such Creation (a) relates in any way to the business or to the current or anticipated research or development of the Company or any of its Affiliated Entities; or (b) results in any way from his work at the Company.

(d) Executive will not assert any rights to any invention, discovery, idea or improvement relating to the business of the Company or any of its Affiliated Entities or to his duties hereunder as having been made or acquired by Executive prior to his work for the Company.

(e) Executive agrees to cooperate fully with the Company, both during and after his employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights, patents, trademarks and other intellectual property rights (both in the United States and foreign countries) relating to such Creations. Executive shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Creations. Executive further agrees that if the Company is unable, after reasonable effort, to secure Executive's signature on any such papers, any officer of the Company shall be entitled to execute such papers as his agent and attorney-in-fact and Executive hereby irrevocably designates and appoints each officer of the Company as his agent and attorney-in-fact to execute any such papers on his behalf and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Creations, under the conditions described in this paragraph.

9. Non-solicitation. Executive agrees that, during the Term and until six (6) months after the termination of his employment, Executive will not, directly or indirectly, including on behalf of any person, firm or other entity, employ or actively solicit for employment any employee of the Company or any of its Affiliated Entities, or anyone who was an employee of the Company or any of its Affiliated Entities within the one-year period prior to the termination of Executive's employment, or induce any such employee to terminate his or her employment with the Company or any of its Affiliated Entities.

10. Representation and Warranty. The Executive hereby acknowledges and represents that he has had the opportunity to consult with legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein. Executive represents and warrants that Executive has provided the Company a true and correct copy of any agreements that purport: (a) to limit Executive's right to be employed by the Company; (b) to prohibit Executive from engaging in any activities on behalf of the Company; or (c) to restrict Executive's right to use or disclose any information while employed by the Company. Executive further represents and warrants that Executive will not use on the Company's behalf any information, materials, data or documents belonging to a third party that are not generally available to the public, unless Executive has obtained written authorization to do so from the third party and provided such authorization to the Company. In the course of Executive's employment with the Company, Executive is not to breach any obligation of confidentiality that Executive has with third parties, and Executive agrees to fulfill all such obligations during Executive's employment with the Company. Executive further agrees not to disclose to the Company or use while working for the Company any trade secrets belonging to a third party.

11. Injunctive Relief. Without limiting the remedies available to the Company, Executive acknowledges that a breach of any of the covenants contained in Section 8 above may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure precisely damages for such injuries and that, in the event of such a breach or threat thereof, the Company shall be entitled, without the requirement to post bond or other security, to seek a temporary restraining order and/or injunction restraining Executive from engaging in activities prohibited by this Agreement or such other relief as may be required to specifically enforce any of the covenants in Section 8 of this Agreement.

12. Notice. Any notice or other communication required or permitted to be given to the Parties shall be deemed to have been given if either personally delivered, or if sent for next-day delivery by nationally recognized overnight courier, and addressed as follows:

If to Executive, to:

Gordon W. Kinder
[***]
[***]
[***]

If to the Company, to:

Bluejay Diagnostic, Inc.,
360 Massachusetts Ave
Acton, MA 01720
Attention: CEO

13. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, all other provisions shall nonetheless remain in full force and effect.

14. Withholding. The Company may withhold from any payment that it is required to make under this Agreement amounts sufficient to satisfy applicable withholding requirements under any federal, state or local law.

15. Indemnification. The Company agrees that Executive will be covered by any "directors and officers" insurance policies then in effect with respect to Executive's acts as an officer and/or director of the Company.

16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof. Any action, suit or other legal proceeding that is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be submitted to the exclusive jurisdiction of any state or federal court in Middlesex County, Massachusetts.

17. Waiver. The waiver by either Party of a breach of any provision of this Agreement shall not be or be construed as a waiver of any subsequent breach. The failure of a Party to insist upon strict adherence to any provision of this Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that provision or any other provision of this Agreement. Any such waiver must be in writing, signed by the Party against whom such waiver is to be enforced.

18. Assignment. This Agreement is a personal contract and Executive may not sell, transfer, assign, pledge or hypothecate his rights, interests and obligations hereunder. Except as otherwise herein expressly provided, this Agreement shall be binding upon and shall inure to the benefit of Executive and his personal representatives and shall inure to the benefit of and be binding upon the Company and its successors and assigns, including without limitation, any corporation or other entity into which the Company is merged or which acquires all or substantially all of the assets of the Company.

19. Entire Agreement. This Agreement embodies all of the representations, warranties, covenants, understandings and agreements between the Parties relating to Executive's employment with the Company. No other representations, warranties, covenants, understandings, or agreements exist between the Parties relating to Executive's employment. This Agreement shall supersede all prior agreements, written or oral, relating to Executive's employment. This Agreement may not be amended or modified except by a writing signed by the Parties.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered on the date first written above.

Bluejay Diagnostic, Inc.

By: /s/ Neil Dey
Name: Neil Dey
Title: CEO

Agreed to and Accepted:

Gordon Kinder

/s/ Gordon Kinder

Date:

Exhibit 10.5

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of July 1, 2021 (the "Effective Date"), by and between Bluejay Diagnostic, Inc., a Delaware corporation (the "Company") having its principal place of business at 360 Massachusetts Ave, Acton, MA 01720, and Jason Cook ("Executive", and the Company and the Executive collectively referred to herein as the "Parties").

WITNESSETH:

WHEREAS, the Executive has agreed to serve as the Company's Chief Technology Officer and the Company would like to retain Executive as its Chief Technology Officer, and the Parties desire to enter into this Agreement embodying the terms of such employment; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises of the Parties contained herein, the Parties, intending to be legally bound, hereby agree as follows:

1. Title and Job Duties.

(a) Subject to the terms and conditions set forth in this Agreement, commencing on the Effective Date, the Company agrees to employ Executive as Chief Technology Officer. Executive shall report directly to the Company's Chief Executive Officer.

(b) Executive accepts such employment and agrees, during the term of his employment, to devote his full business and professional time and energy to the Company, and agrees faithfully to perform his duties and responsibilities in an efficient, trustworthy and business-like manner. Executive also agrees that the Company's Chief Executive Officer shall determine from time to time such other duties as may be assigned to him. Executive agrees to carry out and abide by such directions of the Company's Chief Executive Officer.

(c) Without limiting the generality of the foregoing, Executive shall not, without the written approval of the Company, render services of a business or commercial nature on his own behalf or on behalf of any other person, firm, or corporation, whether for compensation or otherwise, during his employment hereunder. The foregoing limitation shall not apply to Executive's involvement in associations, charities and service on another entity's board of directors, provided such involvement does not interfere with Executives responsibilities (and as it pertains to any service on another entity's board of directors, provided such action is pre-approved by the Company).

2. Salary and Additional Compensation.

(a) Base Salary. During the Term, the Company shall pay to Executive an annual base salary ("Base Salary"), which shall initially be $200,000. The Board of Directors (the "Board") shall review the Executive's Base Salary no less than annually (at the end of the Company's compensation year, which shall be its fiscal year) and may increase (but not decrease) such Base Salary during the term of this Agreement.

(b) Annual Bonus. For each compensation year during the Term, Executive will be entitled to receive an annual bonus (the "Annual Bonus"), within ninety (90) days of the completion of such year. The final determination of the amount, if any, of the Annual Bonus will be made by, and in the sole discretion of, the Compensation Committee of the Board (or the Board, if such committee has been dissolved), based on goals and objectives previously approved by the Compensation Committee of the Board (or the Board, if such committee has been dissolved). The target Annual Bonus for the 2021 compensation year is 30% of Base Salary (pro rated for partial years). The Annual Bonus shall be payable in a combination of cash and options to purchase Company common stock, as determined in the sole discretion of the Compensation Committee of the Board (or the Board, if such committee has been dissolved). Any options issued hereunder shall in all respects be subject to the terms and conditions of the Company's 2021 Equity Plan (the "Plan"), and the value attributable to any options shall be determined in the sole discretion of the Compensation Committee of the Board (or the Board, if such committee has been dissolved). No Annual Bonus shall be payable to Executive until the completion of the Company's initial public offering ("IPO").

(c) Option Grant. On the Effective Date, Executive will be granted a stock option to purchase 75,000 shares of Company common stock at an exercise price of $3.50 per share (the "Option Grant"). The Option Grant shall have a term of ten years and shall vest as follows: (i) 41,668 shares shall vest as of the Effective Date; and (ii) 33,332 shares shall vest in four (4) equal installments upon the achievement of the following milestone (provided Executive remains continuously employed by Company on and does not resign prior to each such vesting date): (1) EUA of Symphony IL-6 (8,333 shares); (2) 510(k) of Symphony IL-6 for Sepsis (8,333 shares); (3) commencing clinical trial for both hsTnT and NT- pro BNP (8,333 shares); (4) 510(k) approval of hsTNT and NT-pro BNP (8,333 shares). The Option Grant shall in all respects be subject to the terms and conditions of the Plan.

(d) Relocation Allowance. The Company will provide Executive with a relocation allowance of up to $30,000, payable within thirty (30) days of the date that evidence is provided that the Executive has relocated to the Acton Town area if such relocation is completed within eighteen (18) months of the Effective Date.

3. Expenses. In accordance with Company policy, the Company shall reimburse Executive for all reasonable association fees, professional related expenses (certifications, licenses and continuing professional education) and business expenses properly and necessarily incurred and paid by Executive in the performance of his duties under this Agreement, upon his presentment of detailed receipts in the form required by the Company's policy. Notwithstanding the foregoing, all expenses must be promptly submitted for reimbursement by Executive. In no event shall any reimbursement be paid by the Company after the end of the year following the year in which the expense is incurred by Executive.

4. Benefits.

(a) Vacation. Executive shall be entitled to three weeks per year of vacation, sick and personal time and to utilize such vacation as the Executive shall determine; provided however, that Executive shall evidence reasonable judgment with regard to appropriate vacation scheduling.

(b) Health Insurance and Other Plans. Executive shall be eligible to participate in the Company's medical, dental and other employee benefit programs, if any, that are provided by the Company for its employees at Executive's level in accordance with the provisions of any such plans, as the same may be in effect from time to time.

5. Term. The term of employment under this Agreement (the "Term") shall commence on the Effective Date and shall continue until terminated by the Company or Executive in accordance with the terms and conditions set forth herein.

6. Termination.

(a) Termination at the Company's Election.

(i) For Cause. At the election of the Company, Executive's employment may be terminated at any time for Cause (as defined below) upon written notice to Executive given pursuant to Section 12 of this Agreement. For purposes of this Agreement, "Cause" for termination shall mean that Executive: (A) pleads "guilty" or "no contest" to, or is convicted of an act which is defined as a felony under federal or state law, or is indicted or formally charged with acts involving criminal fraud or embezzlement; (B) in carrying out his duties, engages in conduct that constitutes gross negligence or willful misconduct; (C) engages in substantiated fraud, misappropriation or embezzlement against the Company; (D) engages in any inappropriate or improper conduct that causes material harm to the reputation of the Company; or (E) materially breaches any term of this Agreement. With respect to subsection (E) of this section, to the extent such material breach may be cured, the Company shall provide Executive with written notice of the material breach and Executive shall have twenty (20) days to cure such breach.

(ii) Upon Disability or Without Cause; Death. At the election of the Company, Executive's employment may be terminated: (A) should Executive have a physical or mental impairment that substantially limits a major life activity and Executive is unable to perform the essential functions of his job with or without reasonable accommodation ("Disability"); or (B) at any time without Cause. Executive's employment with the Company will end upon Executive's death.

(b) Termination at Executive's Election. Notwithstanding anything contained elsewhere in this Agreement to the contrary, Executive may terminate his employment hereunder at any time and for any reason, upon thirty (30) days' prior written notice given pursuant to Section 12 of this Agreement ("Voluntary Resignation"), provided that upon notice of resignation, the Company may terminate Executive's employment immediately.

(c) Termination in General. If Executive's employment with the Company terminates for any reason, the Company will pay or provide to Executive: (i) any unpaid Base Salary through the date of employment termination, (ii) any unpaid Annual Bonus for the fiscal year prior to the fiscal year in which the termination occurs (payable at the time the bonuses are paid to employees generally), (iii) any accrued but unused vacation or paid time off in accordance with the Company's policy, (iv) reimbursement for any unreimbursed business expenses incurred through the termination date, to the extent reimbursable in accordance with Section 3, and (v) all other payments or benefits (if any) to which Executive is entitled under the terms of any benefit plan or arrangement.

7. Severance.

(a) Subject to Section 7(b) below, if Executive's employment is terminated prior to the end of the Term by the Company without Cause (other than due to death or Disability), Executive shall be entitled to receive a cash severance payment equal to (i) three months of Executive's Base Salary at the time of termination, which shall increase to six months of Executive's Base Salary if such termination occurs after one year from the Effective Date; and (ii) a pro rata portion of the target Annual Bonus for the year in which such termination occurs. Such severance payment shall be made over the three or six month period, as applicable, in accordance with the Company's normal payroll policy, provided that prior to the initial payment, the Executive has executed and delivered to the Company, and has not revoked a general release of the Company, its parents, subsidiaries and affiliates and each of its officers, directors, employees, agents, successors and assigns, and such other persons and/or entities as the Company may determine, in a form reasonably acceptable to the Company. Such general release shall be delivered on or about the date of termination and must be executed within 21 days of termination.

(b) Notwithstanding the foregoing, (i) any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code and the regulations and official guidance issued thereunder ("Section 409A")) that is/are required to be made to Executive hereunder as a "specified employee" (as defined under Section 409A) as a result of such employee's "separation from service" (within the meaning of Section 409A) shall be delayed for the first six (6) months following such separation from service (or, if earlier, the date of death of the specified employee) and shall instead be paid upon expiration of such six (6) month delay period; and (ii) for purposes of any such payment that is subject to Section 409A, if the Executive's termination of employment triggers the payment of "nonqualified deferred compensation" hereunder, then the Executive will not be deemed to have terminated employment until the Executive incurs a "separation from service" within the meaning of Section 409A.

8. Confidentiality Agreement.

(a) Executive understands that during his employment he will have access to unpublished and otherwise confidential information both of a technical and non-technical nature, relating to the business of the Company and any of its parents, subsidiaries, divisions, affiliates (collectively, "Affiliated Entities"), or clients, including without limitation any of their actual or anticipated business, research or development, any of their technology or the implementation or exploitation thereof, including without limitation information Executive and others have collected, obtained or created, information pertaining to patent formulations, vendors, prices, costs, materials, processes, codes, material results, technology, system designs, system specifications, materials of construction, trade secrets and equipment designs, including information disclosed to the Company by others under agreements to hold such information confidential (collectively, the "Confidential Information"). Executive agrees to observe all Company policies and procedures concerning such Confidential Information. Executive further agrees not to disclose or use, either during his employment or at any time thereafter, any Confidential Information for any purpose, including without limitation any competitive purpose, unless authorized to do so by the Company in writing, except that he may disclose and use such information when necessary in the performance of his duties for the Company. Executive's obligations under this Agreement will continue with respect to Confidential Information, whether or not his employment is terminated, until such information becomes generally available from public sources through no action of Executive. Notwithstanding the foregoing, however, Executive shall be permitted to disclose Confidential Information as may be required by a subpoena or other governmental order, provided that he first notifies promptly the Company of such subpoena, order or other requirement and allows the Company the opportunity to obtain a protective order or other appropriate remedy. Nothing herein shall prohibit Employee from (i) reporting a suspected violation of law to any governmental or regulatory agency and cooperating with such agency, or from receiving a monetary recovery for information provided to such agency, (ii) testifying truthfully under oath pursuant to subpoena or other legal process or (iii) making disclosures that are otherwise protected under applicable law or regulation.

(b) During Executive's employment, upon the Company's request, or upon the termination of his employment for any reason, Executive will promptly deliver to the Company all documents, records, files, notebooks, manuals, letters, notes, reports, customer and supplier lists, cost and profit data, e-mail, apparatus, computers, cell phones, tablets, hardware, software, drawings, and any other material of the Company or any of its Affiliated Entities or clients, including all materials pertaining to Confidential Information developed by Executive or others, and all copies of such materials, whether of a technical, business or fiscal nature, whether on the hard drive of a laptop or desktop computer, in hard copy, disk or any other format, which are in Executive's possession, custody or control.

(c) Executive will promptly disclose to the Company any idea, invention, discovery or improvement, whether patentable or not ("Creations"), conceived or made by him alone or with others at any time during his employment. Executive agrees that the Company owns all such Creations, conceived or made by Executive alone or with others at any time during his employment, and Executive hereby assigns and agrees to assign to the Company all rights he has or may acquire therein and agrees to execute any and all applications, assignments and other instruments relating thereto which the Company deems necessary or desirable. These obligations shall continue beyond the termination of his employment with respect to Creations and derivatives of such Creations conceived or made during his employment with the Company. Executive understands that the obligation to assign Creations to the Company shall not apply to any Creation which is developed entirely on his own time without using any of the Company's equipment, supplies, facilities, and/or Confidential Information unless such Creation (a) relates in any way to the business or to the current or anticipated research or development of the Company or any of its Affiliated Entities; or (b) results in any way from his work at the Company.

(d) Executive will not assert any rights to any invention, discovery, idea or improvement relating to the business of the Company or any of its Affiliated Entities or to his duties hereunder as having been made or acquired by Executive prior to his work for the Company.

(e) Executive agrees to cooperate fully with the Company, both during and after his employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights, patents, trademarks and other intellectual property rights (both in the United States and foreign countries) relating to such Creations. Executive shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Creations. Executive further agrees that if the Company is unable, after reasonable effort, to secure Executive's signature on any such papers, any officer of the Company shall be entitled to execute such papers as his agent and attorney-in-fact and Executive hereby irrevocably designates and appoints each officer of the Company as his agent and attorney-in-fact to execute any such papers on his behalf and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Creations, under the conditions described in this paragraph.

9. Non-solicitation. Executive agrees that, during the Term and until six (6) months after the termination of his employment, Executive will not, directly or indirectly, including on behalf of any person, firm or other entity, employ or actively solicit for employment any employee of the Company or any of its Affiliated Entities, or anyone who was an employee of the Company or any of its Affiliated Entities within the one-year period prior to the termination of Executive's employment, or induce any such employee to terminate his or her employment with the Company or any of its Affiliated Entities.

10. Representation and Warranty. The Executive hereby acknowledges and represents that he has had the opportunity to consult with legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein. Executive represents and warrants that Executive has provided the Company a true and correct copy of any agreements that purport: (a) to limit Executive's right to be employed by the Company; (b) to prohibit Executive from engaging in any activities on behalf of the Company; or (c) to restrict Executive's right to use or disclose any information while employed by the Company. Executive further represents and warrants that Executive will not use on the Company's behalf any information, materials, data or documents belonging to a third party that are not generally available to the public, unless Executive has obtained written authorization to do so from the third party and provided such authorization to the Company. In the course of Executive's employment with the Company, Executive is not to breach any obligation of confidentiality that Executive has with third parties, and Executive agrees to fulfill all such obligations during Executive's employment with the Company. Executive further agrees not to disclose to the Company or use while working for the Company any trade secrets belonging to a third party.

11. Injunctive Relief. Without limiting the remedies available to the Company, Executive acknowledges that a breach of any of the covenants contained in Section 8 above may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure precisely damages for such injuries and that, in the event of such a breach or threat thereof, the Company shall be entitled, without the requirement to post bond or other security, to seek a temporary restraining order and/or injunction restraining Executive from engaging in activities prohibited by this Agreement or such other relief as may be required to specifically enforce any of the covenants in Section 8 of this Agreement.

12. Notice. Any notice or other communication required or permitted to be given to the Parties shall be deemed to have been given if either personally delivered, or if sent for next-day delivery by nationally recognized overnight courier, and addressed as follows:

If to Executive, to:

Dr. Jason Cook
[***]
[***]

If to the Company, to:

Bluejay Diagnostic, Inc.,
360 Massachusetts Ave
Acton, MA 01720
Attention: CEO

13. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, all other provisions shall nonetheless remain in full force and effect.

14. Withholding. The Company may withhold from any payment that it is required to make under this Agreement amounts sufficient to satisfy applicable withholding requirements under any federal, state or local law.

15. Indemnification. The Company agrees that Executive will be covered by any "directors and officers" insurance policies then in effect with respect to Executive's acts as an officer and/or director of the Company.

16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof. Any action, suit or other legal proceeding that is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be submitted to the exclusive jurisdiction of any state or federal court in Middlesex County, Massachusetts.

17. Waiver. The waiver by either Party of a breach of any provision of this Agreement shall not be or be construed as a waiver of any subsequent breach. The failure of a Party to insist upon strict adherence to any provision of this Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that provision or any other provision of this Agreement. Any such waiver must be in writing, signed by the Party against whom such waiver is to be enforced.

18. Assignment. This Agreement is a personal contract and Executive may not sell, transfer, assign, pledge or hypothecate his rights, interests and obligations hereunder. Except as otherwise herein expressly provided, this Agreement shall be binding upon and shall inure to the benefit of Executive and his personal representatives and shall inure to the benefit of and be binding upon the Company and its successors and assigns, including without limitation, any corporation or other entity into which the Company is merged or which acquires all or substantially all of the assets of the Company.

19. Entire Agreement. This Agreement embodies all of the representations, warranties, covenants, understandings and agreements between the Parties relating to Executive's employment with the Company. No other representations, warranties, covenants, understandings, or agreements exist between the Parties relating to Executive's employment. This Agreement shall supersede all prior agreements, written or oral, relating to Executive's employment. This Agreement may not be amended or modified except by a writing signed by the Parties.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered on the date first written above.

Bluejay Diagnostic, Inc.

By: /s/ Neil Dey
Name: Neil Dey
Title: CEO

Agreed to and Accepted:

Jason Cook

/s/ Jason Cook

Date: 07/01/2021

Exhibit 10.6

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of July 1, 2021 (the "Effective Date"), by and between Bluejay Diagnostic, Inc., a Delaware corporation (the "Company") having its principal place of business at 360 Massachusetts Ave, Acton, MA 01720, and Kevin Vance ("Executive", and the Company and the Executive collectively referred to herein as the "Parties").

WITNESSETH:

WHEREAS, the Executive has agreed to serve as the Company's Chief Commercial Officer and the Company would like to retain Executive as its Chief Commercial Officer, and the Parties desire to enter into this Agreement embodying the terms of such employment; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants and promises of the Parties contained herein, the Parties, intending to be legally bound, hereby agree as follows:

1. Title and Job Duties.

(a) Subject to the terms and conditions set forth in this Agreement, commencing on the Effective Date, the Company agrees to employ Executive as Chief Commercial Officer. Executive shall report directly to the Company's Chief Executive Officer.

(b) Executive accepts such employment and agrees, during the term of his employment, to devote his full business and professional time and energy to the Company, and agrees faithfully to perform his duties and responsibilities in an efficient, trustworthy and business-like manner. Executive also agrees that the Company's Chief Executive Officer shall determine from time to time such other duties as may be assigned to him. Executive agrees to carry out and abide by such directions of the Company's Chief Executive Officer.

(c) Without limiting the generality of the foregoing, Executive shall not, without the written approval of the Company, render services of a business or commercial nature on his own behalf or on behalf of any other person, firm, or corporation, whether for compensation or otherwise, during his employment hereunder. The foregoing limitation shall not apply to Executive's involvement in associations, charities and service on another entity's board of directors, provided such involvement does not interfere with Executives responsibilities (and as it pertains to any service on another entity's board of directors, provided such action is pre-approved by the Company).

2. Salary and Additional Compensation.

(a) Base Salary. During the Term, the Company shall pay to Executive an annual base salary ("Base Salary"), which shall initially be $200,000. The Board of Directors (the "Board") shall review the Executive's Base Salary no less than annually (at the end of the Company's compensation year, which shall be its fiscal year) and may increase (but not decrease) such Base Salary during the term of this Agreement.

(b) Annual Bonus. For each compensation year during the Term, Executive will be entitled to receive an annual bonus (the "Annual Bonus"), within ninety (90) days of the completion of such year. The final determination of the amount, if any, of the Annual Bonus will be made by, and in the sole discretion of, the Compensation Committee of the Board (or the Board, if such committee has been dissolved), based on goals and objectives previously approved by the Compensation Committee of the Board (or the Board, if such committee has been dissolved). The target Annual Bonus for the 2021 compensation year is 30% of Base Salary (pro rated for partial years). The Annual Bonus shall be payable in a combination of cash and options to purchase Company common stock, as determined in the sole discretion of the Compensation Committee of the Board (or the Board, if such committee has been dissolved). Any options issued hereunder shall in all respects be subject to the terms and conditions of the Company's 2021 Equity Plan (the "Plan"), and the value attributable to any options shall be determined in the sole discretion of the Compensation Committee of the Board (or the Board, if such committee has been dissolved). No Annual Bonus shall be payable to Executive until the completion of the Company's initial public offering ("IPO").

Option Grant. On the Effective Date, Executive will be granted a stock option to purchase 55,000 shares of Company common stock at an exercise price of $3.50 per share (the "Option Grant"). The Option Grant shall have a term of ten years and shall vest as follows: (i) 5,000 shares shall vest as of the Effective Date; and (ii) 30,000 option shares shall vest upon the successful closing of the Company's initial public offering, (iii) 10,000 option shares shall vest if and when Participant acquires a customer for the Company and the customer completes a Laboratory Designed Test ("LDT"), and (iv) 10,000 option shares shall vest if Participant procures customer orders for sales in the aggregate of $1.5 million; provided Executive remains continuously employed by Company on and does not resign prior to each such vesting date. The Option Grant shall in all respects be subject to the terms and conditions of the Plan.

(c) Automobile Allowance. The Company will provide Executive with an automobile allowance of $600 per month.

(d) Sales Commission. During the Term, Executive shall be entitled to receive certain sales commissions pursuant to a mutually agreeable sales commission agreement to be executed following the execution of this Agreement.

3. Expenses. In accordance with Company policy, the Company shall reimburse Executive for all reasonable association fees, professional related expenses (certifications, licenses and continuing professional education) and business expenses properly and necessarily incurred and paid by Executive in the performance of his duties under this Agreement, upon his presentment of detailed receipts in the form required by the Company's policy. Notwithstanding the foregoing, all expenses must be promptly submitted for reimbursement by Executive. In no event shall any reimbursement be paid by the Company after the end of the year following the year in which the expense is incurred by Executive.

4. Benefits.

(a) Vacation. Executive shall be entitled to three weeks per year of vacation, sick and personal time and to utilize such vacation as the Executive shall determine; provided however, that Executive shall evidence reasonable judgment with regard to appropriate vacation scheduling.

(b) Health Insurance and Other Plans. Executive shall be eligible to participate in the Company's medical, dental and other employee benefit programs, if any, that are provided by the Company for its employees at Executive's level in accordance with the provisions of any such plans, as the same may be in effect from time to time.

5. Term. The term of employment under this Agreement (the "Term") shall commence on the Effective Date and shall continue until terminated by the Company or Executive in accordance with the terms and conditions set forth herein.

6. Termination.

(a) Termination at the Company's Election.

(i) For Cause. At the election of the Company, Executive's employment may be terminated at any time for Cause (as defined below) upon written notice to Executive given pursuant to Section 12 of this Agreement. For purposes of this Agreement, "Cause" for termination shall mean that Executive: (A) pleads "guilty" or "no contest" to, or is convicted of an act which is defined as a felony under federal or state law, or is indicted or formally charged with acts involving criminal fraud or embezzlement; (B) in carrying out his duties, engages in conduct that constitutes gross negligence or willful misconduct; (C) engages in substantiated fraud, misappropriation or embezzlement against the Company; (D) engages in any inappropriate or improper conduct that causes material harm to the reputation of the Company; or (E) materially breaches any term of this Agreement. With respect to subsection (E) of this section, to the extent such material breach may be cured, the Company shall provide Executive with written notice of the material breach and Executive shall have twenty (20) days to cure such breach.

(ii) Upon Disability or Without Cause; Death. At the election of the Company, Executive's employment may be terminated: (A) should Executive have a physical or mental impairment that substantially limits a major life activity and Executive is unable to perform the essential functions of his job with or without reasonable accommodation ("Disability"); or (B) at any time without Cause. Executive's employment with the Company will end upon Executive's death.

(b) Termination at Executive's Election. Notwithstanding anything contained elsewhere in this Agreement to the contrary, Executive may terminate his employment hereunder at any time and for any reason, upon thirty (30) days' prior written notice given pursuant to Section 12 of this Agreement ("Voluntary Resignation"), provided that upon notice of resignation, the Company may terminate Executive's employment immediately.

(c) Termination in General. If Executive's employment with the Company terminates for any reason, the Company will pay or provide to Executive: (i) any unpaid Base Salary through the date of employment termination, (ii) any unpaid Annual Bonus for the fiscal year prior to the fiscal year in which the termination occurs (payable at the time the bonuses are paid to employees generally), (iii) any accrued but unused vacation or paid time off in accordance with the Company's policy, (iv) reimbursement for any unreimbursed business expenses incurred through the termination date, to the extent reimbursable in accordance with Section 3, and (v) all other payments or benefits (if any) to which Executive is entitled under the terms of any benefit plan or arrangement.

7. Severance.

(a) Subject to Section 7(b) below, if Executive's employment is terminated prior to the end of the Term by the Company without Cause (other than due to death or Disability), Executive shall be entitled to receive a cash severance payment equal to (i) three months of Executive's Base Salary at the time of termination, which shall increase to six months of Executive's Base Salary if such termination occurs after one year from the Effective Date; and (ii) a pro rata portion of the target Annual Bonus for the year in which such termination occurs. Such severance payment shall be made over the three or six month period, as applicable, in accordance with the Company's normal payroll policy, provided that prior to the initial payment, the Executive has executed and delivered to the Company, and has not revoked a general release of the Company, its parents, subsidiaries and affiliates and each of its officers, directors, employees, agents, successors and assigns, and such other persons and/or entities as the Company may determine, in a form reasonably acceptable to the Company. Such general release shall be delivered on or about the date of termination and must be executed within 21 days of termination.

(b) Notwithstanding the foregoing, (i) any payment(s) of "nonqualified deferred compensation" (within the meaning of Section 409A of the Code and the regulations and official guidance issued thereunder ("Section 409A")) that is/are required to be made to Executive hereunder as a "specified employee" (as defined under Section 409A) as a result of such employee's "separation from service" (within the meaning of Section 409A) shall be delayed for the first six (6) months following such separation from service (or, if earlier, the date of death of the specified employee) and shall instead be paid upon expiration of such six (6) month delay period; and (ii) for purposes of any such payment that is subject to Section 409A, if the Executive's termination of employment triggers the payment of "nonqualified deferred compensation" hereunder, then the Executive will not be deemed to have terminated employment until the Executive incurs a "separation from service" within the meaning of Section 409A.

8. Confidentiality Agreement.

(a) Executive understands that during his employment he will have access to unpublished and otherwise confidential information both of a technical and non-technical nature, relating to the business of the Company and any of its parents, subsidiaries, divisions, affiliates (collectively, "Affiliated Entities"), or clients, including without limitation any of their actual or anticipated business, research or development, any of their technology or the implementation or exploitation thereof, including without limitation information Executive and others have collected, obtained or created, information pertaining to patent formulations, vendors, prices, costs, materials, processes, codes, material results, technology, system designs, system specifications, materials of construction, trade secrets and equipment designs, including information disclosed to the Company by others under agreements to hold such information confidential (collectively, the "Confidential Information"). Executive agrees to observe all Company policies and procedures concerning such Confidential Information. Executive further agrees not to disclose or use, either during his employment or at any time thereafter, any Confidential Information for any purpose, including without limitation any competitive purpose, unless authorized to do so by the Company in writing, except that he may disclose and use such information when necessary in the performance of his duties for the Company. Executive's obligations under this Agreement will continue with respect to Confidential Information, whether or not his employment is terminated, until such information becomes generally available from public sources through no action of Executive. Notwithstanding the foregoing, however, Executive shall be permitted to disclose Confidential Information as may be required by a subpoena or other governmental order, provided that he first notifies promptly the Company of such subpoena, order or other requirement and allows the Company the opportunity to obtain a protective order or other appropriate remedy. Nothing herein shall prohibit Employee from (i) reporting a suspected violation of law to any governmental or regulatory agency and cooperating with such agency, or from receiving a monetary recovery for information provided to such agency, (ii) testifying truthfully under oath pursuant to subpoena or other legal process or (iii) making disclosures that are otherwise protected under applicable law or regulation.

(b) During Executive's employment, upon the Company's request, or upon the termination of his employment for any reason, Executive will promptly deliver to the Company all documents, records, files, notebooks, manuals, letters, notes, reports, customer and supplier lists, cost and profit data, e-mail, apparatus, computers, cell phones, tablets, hardware, software, drawings, and any other material of the Company or any of its Affiliated Entities or clients, including all materials pertaining to Confidential Information developed by Executive or others, and all copies of such materials, whether of a technical, business or fiscal nature, whether on the hard drive of a laptop or desktop computer, in hard copy, disk or any other format, which are in Executive's possession, custody or control.

(c) Executive will promptly disclose to the Company any idea, invention, discovery or improvement, whether patentable or not ("Creations"), conceived or made by him alone or with others at any time during his employment. Executive agrees that the Company owns all such Creations, conceived or made by Executive alone or with others at any time during his employment, and Executive hereby assigns and agrees to assign to the Company all rights he has or may acquire therein and agrees to execute any and all applications, assignments and other instruments relating thereto which the Company deems necessary or desirable. These obligations shall continue beyond the termination of his employment with respect to Creations and derivatives of such Creations conceived or made during his employment with the Company. Executive understands that the obligation to assign Creations to the Company shall not apply to any Creation which is developed entirely on his own time without using any of the Company's equipment, supplies, facilities, and/or Confidential Information unless such Creation (a) relates in any way to the business or to the current or anticipated research or development of the Company or any of its Affiliated Entities; or (b) results in any way from his work at the Company.

(d) Executive will not assert any rights to any invention, discovery, idea or improvement relating to the business of the Company or any of its Affiliated Entities or to his duties hereunder as having been made or acquired by Executive prior to his work for the Company.

(e) Executive agrees to cooperate fully with the Company, both during and after his employment with the Company, with respect to the procurement, maintenance and enforcement of copyrights, patents, trademarks and other intellectual property rights (both in the United States and foreign countries) relating to such Creations. Executive shall sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in any Creations. Executive further agrees that if the Company is unable, after reasonable effort, to secure Executive's signature on any such papers, any officer of the Company shall be entitled to execute such papers as his agent and attorney-in-fact and Executive hereby irrevocably designates and appoints each officer of the Company as his agent and attorney-in-fact to execute any such papers on his behalf and to take any and all actions as the Company may deem necessary or desirable in order to protect its rights and interests in any Creations, under the conditions described in this paragraph.

9. Non-solicitation. Executive agrees that, during the Term and until six (6) months after the termination of his employment, Executive will not, directly or indirectly, including on behalf of any person, firm or other entity, employ or actively solicit for employment any employee of the Company or any of its Affiliated Entities, or anyone who was an employee of the Company or any of its Affiliated Entities within the one-year period prior to the termination of Executive's employment, or induce any such employee to terminate his or her employment with the Company or any of its Affiliated Entities.

10. Representation and Warranty. The Executive hereby acknowledges and represents that he has had the opportunity to consult with legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein. Executive represents and warrants that Executive has provided the Company a true and correct copy of any agreements that purport: (a) to limit Executive's right to be employed by the Company; (b) to prohibit Executive from engaging in any activities on behalf of the Company; or (c) to restrict Executive's right to use or disclose any information while employed by the Company. Executive further represents and warrants that Executive will not use on the Company's behalf any information, materials, data or documents belonging to a third party that are not generally available to the public, unless Executive has obtained written authorization to do so from the third party and provided such authorization to the Company. In the course of Executive's employment with the Company, Executive is not to breach any obligation of confidentiality that Executive has with third parties, and Executive agrees to fulfill all such obligations during Executive's employment with the Company. Executive further agrees not to disclose to the Company or use while working for the Company any trade secrets belonging to a third party.

11. Injunctive Relief. Without limiting the remedies available to the Company, Executive acknowledges that a breach of any of the covenants contained in Section 8 above may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it will not be possible to measure precisely damages for such injuries and that, in the event of such a breach or threat thereof, the Company shall be entitled, without the requirement to post bond or other security, to seek a temporary restraining order and/or injunction restraining Executive from engaging in activities prohibited by this Agreement or such other relief as may be required to specifically enforce any of the covenants in Section 8 of this Agreement.

12. Notice. Any notice or other communication required or permitted to be given to the Parties shall be deemed to have been given if either personally delivered, or if sent for next-day delivery by nationally recognized overnight courier, and addressed as follows:

If to Executive, to:

Kevin Vance
[***]
[***]

If to the Company, to:

Bluejay Diagnostic, Inc.,
360 Massachusetts Ave
Acton, MA 01720
Attention: CEO

13. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, all other provisions shall nonetheless remain in full force and effect.

14. Withholding. The Company may withhold from any payment that it is required to make under this Agreement amounts sufficient to satisfy applicable withholding requirements under any federal, state or local law.

15. Indemnification. The Company agrees that Executive will be covered by any "directors and officers" insurance policies then in effect with respect to Executive's acts as an officer and/or director of the Company.

16. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws provisions thereof. Any action, suit or other legal proceeding that is commenced to resolve any matter arising under or relating to any provision of this Agreement shall be submitted to the exclusive jurisdiction of any state or federal court in Middlesex County, Massachusetts.

17. Waiver. The waiver by either Party of a breach of any provision of this Agreement shall not be or be construed as a waiver of any subsequent breach. The failure of a Party to insist upon strict adherence to any provision of this Agreement on one or more occasions shall not be considered a waiver or deprive that Party of the right thereafter to insist upon strict adherence to that provision or any other provision of this Agreement. Any such waiver must be in writing, signed by the Party against whom such waiver is to be enforced.

18. Assignment. This Agreement is a personal contract and Executive may not sell, transfer, assign, pledge or hypothecate his rights, interests and obligations hereunder. Except as otherwise herein expressly provided, this Agreement shall be binding upon and shall inure to the benefit of Executive and his personal representatives and shall inure to the benefit of and be binding upon the Company and its successors and assigns, including without limitation, any corporation or other entity into which the Company is merged or which acquires all or substantially all of the assets of the Company.

19. Entire Agreement. This Agreement embodies all of the representations, warranties, covenants, understandings and agreements between the Parties relating to Executive's employment with the Company. No other representations, warranties, covenants, understandings, or agreements exist between the Parties relating to Executive's employment. This Agreement shall supersede all prior agreements, written or oral, relating to Executive's employment. This Agreement may not be amended or modified except by a writing signed by the Parties.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered on the date first written above.

Bluejay Diagnostic, Inc.

By: /s/ Neil Dey
Name: Neil Dey
Title: CEO

Agreed to and Accepted:

Kevin Vance

/s/ Kevin Vance

Date:

Exhibit 10.7

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "Agreement") is dated as of June 7, 2021, between Blue Jay Diagnostics, Inc., a Delaware corporation (the "Company"), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a "Purchaser" and collectively, the "Purchasers").

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act (as defined below), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully described in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and each Purchaser agree as follows:

ARTICLE I.
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement: (a) capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Certificate of Designation (as defined herein), and (b) the following terms have the meanings set forth in this Section 1.1:

"Acquiring Person" shall have the meaning ascribed to such term in Section 4.7.

"Action" shall have the meaning ascribed to such term in Section 3.1(j).

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

"Allereye Subsidiary" means Spinco, LLC, a wholly owned subsidiary of the Company.

"Board of Directors" means the board of directors of the Company.

"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; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York are generally are open for use by customers on such day.

"Certificate of Designation" means the Certificate of Designation to be filed prior to the Closing by the Company with the Secretary of State of Delaware, in the form of Exhibit D attached hereto.

"Closings" means the First Closing and the Second Closing.

"Closing Dates" means the First Closing Date and the Second Closing Date, as applicable.

"Closing Statement" means the Closing Statement in the form on Annex A attached hereto.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $$0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company Counsel" means Schiff Hardin LLP.

"Conversion Price" shall have the meaning ascribed to such term in the Certificate of Designation.

"Conversion Shares" shall have the meaning ascribed to such term in the Certificate of Designation.

"Debentures" means the 7.5% Senior Secured Convertible Debentures due, subject to the terms therein, May 31, 2022, issued by the Company to the Purchasers hereunder, in the form of Exhibit A attached hereto.

"Disclosure Schedules" shall have the meaning ascribed to such term in Section 3.1.

"EGS" means Ellenoff Grossman & Schole LLP, with offices located at 1345 Avenue of the Americas, New York, New York 10105-0302.

"Effective Date" means the earliest of the date that (a) the Registration Statement has been declared effective by the Commission, (b) all of the Underlying Shares have been sold pursuant to Rule 144 or may be sold pursuant to Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 and without volume or manner-of-sale restrictions, (c) following the one year anniversary of the applicable Closing Date provided that a holder of the Underlying Shares is not an Affiliate of the Company or (d) all of the Underlying Shares may be sold pursuant to an exemption from registration under Section 4(a)(1) of the Securities Act without volume or manner-of-sale restrictions and Company Counsel has delivered to such holders a standing written unqualified opinion that resales may then be made by such holders of the Underlying Shares pursuant to such exemption which opinion shall be in form and substance reasonably acceptable to such holders.

"Evaluation Date" shall have the meaning ascribed to such term in Section 3.1(s).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Exempt Issuance" means the issuance of (a) shares of Common Stock or options to employees, officers or directors of the Company pursuant to any stock or option plan duly adopted for such purpose, by a majority of the non-employee members of the Board of Directors or a majority of the members of a committee of non-employee directors established for such purpose for services rendered to the Company, (b) securities upon the exercise or exchange of or conversion of any Securities issued hereunder, warrants to the Placement Agents in connection with the transactions pursuant to this Agreement and any securities upon exercise of warrants to the Placement Agents and/or other securities exercisable or exchangeable for or convertible into shares of Common Stock issued and outstanding on the date of this Agreement, provided that such securities have not been amended since the date of this Agreement to increase the number of such securities or to decrease the exercise price, exchange price or conversion price of such securities (other than in connection with stock splits or combinations) or to extend the term of such securities, (c) securities issued pursuant to acquisitions or strategic transactions approved by a majority of the disinterested directors of the Company, provided that such securities are issued as "restricted securities" (as defined in Rule 144) and carry no registration rights that require or permit the filing of any registration statement in connection therewith during the prohibition period in Section 4.13(a) herein, and provided that any such issuance shall only be to a Person (or to the equityholders of a Person) which is, itself or through its subsidiaries, an operating company or an owner of an asset in a business synergistic with the business of the Company and shall provide to the Company additional benefits in addition to the investment of funds, but shall not include a transaction in which the Company is issuing securities primarily for the purpose of raising capital or to an entity whose primary business is investing in securities.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"First Closing" means the closing of the purchase and sale of Securities pursuant to Section 2.1(a).

"First Closing Date" means the Trading Day on which all of the Transaction Documents have been executed and delivered by the applicable parties thereto, and all conditions precedent to (i) the Purchasers' obligations to pay the First Closing Subscription Amount and (ii) the Company's obligations to deliver the Securities purchased at such First Closing, in each case, have been satisfied or waived, but in no event later than the second Trading Day following the date hereof.

"FDA" shall have the meaning ascribed to such term in Section 3.1(ll).

"FDCA" shall have the meaning ascribed to such term in Section 3.1(ll).

"GAAP" shall have the meaning ascribed to such term in Section 3.1(h).

"Indebtedness" shall have the meaning ascribed to such term in Section 3.1(bb).

"Intellectual Property Rights" shall have the meaning ascribed to such term in Section 3.1(o).

"IPO" means the initial public offering of the Company.

"IPO Date" means the date that the registration statement registering the shares to be issued in the IPO is declared effective by the Commission.

"Legend Removal Date" shall have the meaning ascribed to such term in Section 4.1(c).

"Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

"Lock-Up Agreement" means the Lock-Up Agreement, dated as of the date hereof, by and among the Company and the directors, officers, and 10% stockholders of the Company, in the form of Exhibit C attached hereto.

"Material Adverse Effect" shall have the meaning assigned to such term in Section 3.1(b).

"Material Permits" shall have the meaning ascribed to such term in Section 3.1(m).

"Maximum Rate" shall have the meaning ascribed to such term in Section 5.17.

"Participation Maximum" shall have the meaning ascribed to such term in Section 4.12(a).

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Pharmaceutical Product" shall have the meaning ascribed to such term in Section 3.1(ll).

"Placement Agents" means Dawson James Securities, Inc. and I-Bankers Direct, LLC.

"Pledged Securities" means any and all certificates and other instruments representing or evidencing all of the capital stock and other equity interests of the Subsidiaries.

"Pre-Notice" shall have the meaning ascribed to such term in Section 4.12(b).

"Preferred Stock" means the up to 4,500 shares of the Company's Series D Convertible Preferred Stock issued hereunder having the rights, preferences and privileges set forth in the Certificate of Designation.

"Pro Rata Portion" shall have the meaning ascribed to such term in Section 4.12(e).

"Proceeding" means an action, claim, suit, investigation or proceeding (including, without limitation, an informal investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"Public Information Failure" shall have the meaning ascribed to such term in Section 4.3(b).

"Public Information Failure Payments" shall have the meaning ascribed to such term in Section 4.3(b).

"Purchaser Party" shall have the meaning ascribed to such term in Section 4.10.

"Registration Rights Agreement" means the Registration Rights Agreement, dated on or about the date hereof, among the Company and the Purchasers, in the form of Exhibit B attached hereto.

"Registration Statement" means a registration statement meeting the requirements set forth in the Registration Rights Agreement and covering the resale of the Underlying Shares by each Purchaser as provided for in the Registration Rights Agreement.

"Required Approvals" shall have the meaning ascribed to such term in Section 3.1(e).

"Required Minimum" means, as of any date, the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including any Underlying Shares issuable upon conversion in full of all shares of Preferred Stock issuable upon conversion in full of the Debentures, ignoring any conversion or exercise limits set forth therein.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"Second Closing" means the closing of the purchase and sale of Securities pursuant to Section 2.1(b).

"Second Closing Date" means the date of the Second Closing.

"Securities" means the Debentures, the Preferred Stock and the Underlying Shares.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Security Agreement" means the Security Agreement, dated the date hereof, among the Company and the Purchasers, in the form of Exhibit E attached hereto.

"Security Documents" shall mean the Security Agreement, the Subsidiary Guarantees, the original Pledged Securities, along with medallion guaranteed executed blank stock powers to the Pledged Securities, and any other documents and filing required thereunder in order to grant the Purchasers a first priority security interest in the assets of the Company and the Subsidiaries as provided in the Security Agreement, including all UCC-1 filing receipts.

"Short Sales" means all "short sales" as defined in Rule 200 of Regulation SHO under the Exchange Act (but shall not be deemed to include locating and/or borrowing shares of Common Stock).

"Subscription Amount" means, as to each Purchaser, the aggregate amount to be paid for Debentures purchased hereunder as specified below such Purchaser's name on the signature page of this Agreement and next to the heading "Subscription Amount," in United States dollars and in immediately available funds.

"Subsequent Financing" shall have the meaning ascribed to such term in Section 4.12(a).

"Subsequent Financing Notice" shall have the meaning ascribed to such term in Section 4.12(b).

"Subsidiary" means, other than the Allereye Subsidiary, any subsidiary of the Company as set forth on Schedule 3.1(a), and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the date hereof.

"Subsidiary Guarantee" means the Subsidiary Guarantee, dated the date hereof, by each Subsidiary in favor of the Purchasers, in the form of Exhibit F attached hereto.

"Trading Day" means a day on which the principal Trading Market is open for trading.

"Trading Market" means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

"Transaction Documents" means this Agreement, the Debentures, the Certificate of Designation, the Registration Rights Agreement, the Security Agreement, the Subsidiary Guarantee, the Lock-Up Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

"Transfer Agent" means the transfer agent of the Company, and any successor transfer agent of the Company.

"Underlying Shares" means the shares of Common Stock issued and issuable upon conversion of the Preferred Stock issuable upon conversion in full of the Debentures, without respect to any limitation or restriction on the conversion set forth in the Certificate of Designation.

"Variable Rate Transaction" shall have the meaning ascribed to such term in Section 4.13(b).

"VWAP" means, for any date following the IPO Date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on the Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

ARTICLE II.
PURCHASE AND SALE

2.1 Closings.

(a) First Closing. Substantially concurrent with the execution and delivery of this Agreement by the parties hereto, subject to the conditions set forth herein, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, an aggregate of $3,000,000 principal amount of Debentures. Each Purchaser shall deliver to the Company, via wire transfer or a certified check, immediately available funds equal to such Purchaser's Subscription Amount as to the First Closing as set forth on the signature page hereto executed by such Purchaser, and the Company shall deliver to each Purchaser its respective Debentures, as determined pursuant to Section 2.2(a), and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the First Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the First Closing shall occur at the offices of EGS or such other location as the parties shall mutually agree.

(b) Second Closing. Within 3 Trading Days of the later of (i) the date that the Company files the Registration Statement with the Commission and (ii) the date that the Company files the registration statement registering the shares of Common Stock to be issued in the IPO, upon the terms and conditions set forth herein, the Company agrees to sell, and the Purchasers, severally and not jointly, agree to purchase, an aggregate of $1,500,000 of Debentures. Each Purchaser shall deliver to the Company, via wire transfer or a certified check, immediately available funds equal to such Purchaser's Subscription Amount as to the Second Closing as set forth on the signature page hereto executed by such Purchaser, and the Company shall deliver to each Purchaser its respective Shares, as determined pursuant to Section 2.2(a), and the Company and each Purchaser shall deliver the other items set forth in Section 2.2 deliverable at the Second Closing. Upon satisfaction of the covenants and conditions set forth in Sections 2.2 and 2.3, the Second Closing shall occur at the offices of EGS or such other location as the parties shall mutually agree.

2.2 Deliveries.

(a) On or prior to each Closing Date, the Company shall deliver or cause to be delivered to each Purchaser the following:

(i) as to the First Closing only, this Agreement duly executed by the Company;

(ii) as to the First Closing only, a legal opinion of Company Counsel, substantially in the form acceptable to the Purchasers;

(iii) a Debenture with a principal amount equal to such Purchaser's Subscription Amount as to the applicable Closing as set forth on the Purchaser's signature page hereto, registered in the name of such Purchaser;

(iv) the Company shall have provided each Purchaser with the Company's wire instructions, on Company letterhead and executed by the Chief Executive Officer or Chief Financial Officer

(v) as to the First Closing only, the Security Agreement, duly executed by the Company and each Subsidiary, along with all of the Security Documents, including the Subsidiary Guarantee, duly executed by the parties thereto, the original Pledged Securities and corresponding stock powers;

(vi) as to the First Closing, the Lock-Up Agreements;

(vii) evidence of the filing and acceptance of the Certificate of Designation from the Secretary of State of Delaware; and

(viii) as to the First Closing only, the Registration Rights Agreement duly executed by the Company.

(b) On or prior to each Closing Date, each Purchaser shall deliver or cause to be delivered to the Company the following:

(i) As to the First Closing only, this Agreement duly executed by such Purchaser;

(ii) such Purchaser's Subscription Amount as to the applicable Closing as set forth on such Purchaser's signature hereto by wire transfer to the account specified in writing by the Company;

(iii) as to the First Closing only, the Security Agreement duly executed by such Purchaser; and

(iv) as to the First Closing only, the Registration Rights Agreement duly executed by such Purchaser.

2.3 Closing Conditions.

(a) The obligations of the Company hereunder in connection with each Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) on the applicable Closing Date of the representations and warranties of the Purchasers contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of each Purchaser required to be performed at or prior to the applicable Closing Date shall have been performed; and

(iii) the delivery by each Purchaser of the items set forth in Section 2.2(b) of this Agreement.

(b) The respective obligations of the Purchasers hereunder in connection with each Closing are subject to the following conditions being met:

(i) the accuracy in all material respects (or, to the extent representations or warranties are qualified by materiality or Material Adverse Effect, in all respects) when made and on the applicable Closing Date of the representations and warranties of the Company contained herein (unless as of a specific date therein in which case they shall be accurate as of such date);

(ii) all obligations, covenants and agreements of the Company required to be performed at or prior to the applicable Closing Date shall have been performed;

(iii) the delivery by the Company of the items set forth in Section 2.2(a) of this Agreement;

(iv) there shall have been no Material Adverse Effect with respect to the Company since the date hereof;

(v) All currently outstanding shares of preferred stock and shareholder loans shall have been converted as set forth on Schedule 3.1(g) attached hereto and, when aggregated with all outstanding warrants of the Company that remain after the Closing, do not exceed, in the aggregate, 11.5 million shares; and

(vi) from the date hereof to each Closing Date, trading in securities generally as reported by Bloomberg L.P. shall not have been suspended or limited, or minimum prices shall not have been established on securities whose trades are reported by such service, or on any Trading Market, nor shall a banking moratorium have been declared either by the United States or New York State authorities nor shall there have occurred any material outbreak or escalation of hostilities or other national or international calamity of such magnitude in its effect on, or any material adverse change in, any financial market which, in each case, in the reasonable judgment of such Purchaser, makes it impracticable or inadvisable to purchase the Securities at the applicable Closing.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, the Company hereby makes the following representations and warranties to each Purchaser:

(a) Subsidiaries. All of the direct and indirect subsidiaries of the Company, other than the Allereye Subsidiary, are set forth on Schedule 3.1(a). The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. If the Company has no subsidiaries, all other references to the Subsidiaries or any of them in the Transaction Documents shall be disregarded.

(b) Organization and Qualification. The Company and each of the Subsidiaries is an entity duly incorporated or otherwise organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, with the requisite power and authority to own and use its properties and assets and to carry on its business as currently conducted. Neither the Company nor any Subsidiary is in violation nor default of any of the provisions of its respective certificate or articles of incorporation, bylaws or other organizational or charter documents. Each of the Company and the Subsidiaries is duly qualified to conduct business and is in good standing as a foreign corporation or other entity in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not have or reasonably be expected to result in: (i) a material adverse effect on the legality, validity or enforceability of any Transaction Document, (ii) a material adverse effect on the results of operations, assets, business, prospects or condition (financial or otherwise) of the Company and the Subsidiaries, taken as a whole, or (iii) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under any Transaction Document (any of (i), (ii) or (iii), a "Material Adverse Effect") and no Proceeding has been instituted in any such jurisdiction revoking, limiting or curtailing or seeking to revoke, limit or curtail such power and authority or qualification.

(c) Authorization; Enforcement.

(i) The Company has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and each of the other Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and each of the other Transaction Documents by the Company and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of the Company and no further action is required by the Company, the Board of Directors or the Company's stockholders in connection herewith or therewith other than in connection with the Required Approvals. This Agreement and each other Transaction Document to which it is a party has been (or upon delivery will have been) duly executed by the Company and, when delivered in accordance with the terms hereof and thereof, will constitute the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(ii) With respect to the Subsidiary Guarantee, each of the Subsidiaries has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by such agreement and otherwise to carry out its obligations thereunder. The execution and delivery of the Subsidiary Guarantee and the consummation by the Company of the transactions contemplated thereby have been duly authorized by all necessary action on the part of the Company, and no further action is required by the respective Subsidiary, its managers or its members in connection therewith. The Subsidiary Guarantee has been (or upon delivery will have been) duly executed by the respective Subsidiaries and, when delivered in accordance with the terms thereof, will constitute the valid and binding obligation of the respective Subsidiary enforceable against such Subsidiary in accordance with its terms, except (A) as listed by general equitable principals and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (B) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (C) insofar as indemnification and contribution provisions may be limited by applicable law.

(d) No Conflicts. The execution, delivery and performance by the Company of this Agreement and the other Transaction Documents to which it is a party, the issuance and sale of the Securities and the consummation by it of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any provision of the Company's or any Subsidiary's certificate or articles of incorporation, bylaws or other organizational or charter documents, or (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company or any Subsidiary, or give to others any rights of termination, amendment, anti-dilution or similar adjustments, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement, credit facility, debt or other instrument (evidencing a Company or Subsidiary debt or otherwise) or other understanding to which the Company or any Subsidiary is a party or by which any property or asset of the Company or any Subsidiary is bound or affected, or (iii) subject to the Required Approvals, conflict with or result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any court or governmental authority to which the Company or a Subsidiary is subject (including federal and state securities laws and regulations), or by which any property or asset of the Company or a Subsidiary is bound or affected; except in the case of each of clauses (ii) and (iii), such as could not have or reasonably be expected to result in a Material Adverse Effect.

(e) Filings, Consents and Approvals. The Company is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Company of the Transaction Documents, other than: (i) the filings required pursuant to Section 4.6 of this Agreement, (ii) the filing with the Commission pursuant to the Registration Rights Agreement, (iii) the notice and/or application(s) to each applicable Trading Market for the issuance and sale of the Securities and the listing of the Conversion Shares for trading thereon on the IPO Date, (iv) the filing of Form D with the Commission and such filings as are required to be made under applicable state securities laws and (v) Shareholder Approval (collectively, the "Required Approvals").

(f) Issuance of the Securities. The Securities are duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Underlying Shares, when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company other than restrictions on transfer provided for in the Transaction Documents. The Company has reserved from its duly authorized capital stock a number of shares of Common Stock for issuance of the Underlying Shares at least equal to the Required Minimum on the date hereof.

(g) Capitalization. The capitalization of the Company as of the date hereof is as set forth on Schedule 3.1(g), which Schedule 3.1(g) shall also include the number of shares of Common Stock owned beneficially, and of record, by Affiliates of the Company as of the date hereof. The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of employee stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by the Transaction Documents. Except as a result of the purchase and sale of the Securities, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock or the capital stock of any Subsidiary, or contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents or capital stock of any Subsidiary. The issuance and sale of the Securities will not obligate the Company or any Subsidiary to issue shares of Common Stock or other securities to any Person (other than the Purchasers). There are no outstanding securities or instruments of the Company or any Subsidiary with any provision that adjusts the exercise, conversion, exchange or reset price of such security or instrument upon an issuance of securities by the Company or any Subsidiary. There are no outstanding securities or instruments of the Company or any Subsidiary that contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any Subsidiary is or may become bound to redeem a security of the Company or such Subsidiary. The Company does not have any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Securities. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(h) Financial Statements. The financial statements of the Company provided to the Purchasers comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis during the periods involved ("GAAP"), except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(i) Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest audited financial statements, (i) there has been no event, occurrence or development that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not incurred any liabilities (contingent or otherwise) other than (A) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, (iii) the Company has not altered its method of accounting, (iv) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock except for the Allereye Subsidiary spinoff and (v) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans and the Allereye Subsidiary spinoff. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Securities contemplated by this Agreement or as set forth on Schedule 3.1(i), no event, liability, fact, circumstance, occurrence or development has occurred or exists or is reasonably expected to occur or exist with respect to the Company or its Subsidiaries or their respective businesses, prospects, properties, operations, assets or financial condition, that would be required to be disclosed by the Company under applicable securities laws at the time this representation is made or deemed made that has not been publicly disclosed at least 1 Trading Day prior to the date that this representation is made.

(j) Litigation. Except as set forth on Schedule 3.1(j), there is no action, suit, inquiry, notice of violation, proceeding or investigation pending or, to the knowledge of the Company, threatened against or affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign) (collectively, an "Action"). None of the Actions set forth on Schedule 3.1(j), (i) adversely affects or challenges the legality, validity or enforceability of any of the Transaction Documents or the Securities or (ii) could, if there were an unfavorable decision, have or reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any Subsidiary, nor any director or officer thereof, is or has been the subject of any Action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company or any Subsidiary under the Exchange Act or the Securities Act.

(k) Labor Relations. No labor dispute exists or, to the knowledge of the Company, is imminent with respect to any of the employees of the Company, which could reasonably be expected to result in a Material Adverse Effect. None of the Company's or its Subsidiaries' employees is a member of a union that relates to such employee's relationship with the Company or such Subsidiary, and neither the Company nor any of its Subsidiaries is a party to a collective bargaining agreement, and the Company and its Subsidiaries believe that their relationships with their employees are good. To the knowledge of the Company, no executive officer of the Company or any Subsidiary, is, or is now expected to be, in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement or non-competition agreement, or any other contract or agreement or any restrictive covenant in favor of any third party, 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. The Company and its Subsidiaries are in compliance with all U.S. federal, state, local and foreign laws and regulations relating to employment and employment practices, terms and conditions of employment and wages and hours, except where the failure to be in compliance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(l) Compliance. Neither the Company nor any Subsidiary: (i) is in default under or in violation of (and no event has occurred that has not been waived that, with notice or lapse of time or both, would result in a default by the Company or any Subsidiary under), nor has the Company or any Subsidiary received notice of a claim that it is in default under or that it is in violation of, any indenture, loan or credit agreement or any other agreement or instrument to which it is a party or by which it or any of its properties is bound (whether or not such default or violation has been waived), (ii) is in violation of any judgment, decree or order of any court, arbitrator or other governmental authority or (iii) is or has been in violation of any statute, rule, ordinance or regulation of any governmental authority, including without limitation all foreign, federal, state and local laws relating to taxes, environmental protection, occupational health and safety, product quality and safety and employment and labor matters, except in each case as could not have or reasonably be expected to result in a Material Adverse Effect.

(m) Environmental Laws. The Company and its Subsidiaries (i) are in compliance with all federal, state, local and foreign laws relating to pollution or protection of human health or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata), including laws relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, or toxic or hazardous substances or wastes (collectively, "Hazardous Materials") into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, as well as all authorizations, codes, decrees, demands, or demand letters, injunctions, judgments, licenses, notices or notice letters, orders, permits, plans or regulations, issued, entered, promulgated or approved thereunder ("Environmental Laws"); (ii) have received all permits licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) are in compliance with all terms and conditions of any such permit, license or approval where in each clause (i), (ii) and (iii), the failure to so comply could be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect.

(n) Regulatory Permits. The Company and the Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such permits could not reasonably be expected to result in a Material Adverse Effect ("Material Permits"), and neither the Company nor any Subsidiary has received any notice of proceedings relating to the revocation or modification of any Material Permit.

(o) Title to Assets. The Company and the Subsidiaries have good and marketable title in fee simple to all real property owned by them and good and marketable title in all personal property owned by them that is material to the business of the Company and the Subsidiaries, in each case free and clear of all Liens, except for (i) Liens as do not materially affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company and the Subsidiaries and (ii) Liens for the payment of federal, state or other taxes, for which appropriate reserves have been made therefor in accordance with GAAP and, the payment of which is neither delinquent nor subject to penalties. Any real property and facilities held under lease by the Company and the Subsidiaries are held by them under valid, subsisting and enforceable leases with which the Company and the Subsidiaries are in compliance.

(p) Intellectual Property. The Company and the Subsidiaries have, or have rights to use, all patents, patent applications, trademarks, trademark applications, service marks, trade names, trade secrets, inventions, copyrights, licenses and other intellectual property rights and similar rights necessary or required for use in connection with their respective businesses and which the failure to so have could have a Material Adverse Effect (collectively, the "Intellectual Property Rights"). None of, and neither the Company nor any Subsidiary has received a notice (written or otherwise) that any of, the Intellectual Property Rights has expired, terminated or been abandoned, or is expected to expire or terminate or be abandoned, within two (2) years from the date of this Agreement. Neither the Company nor any Subsidiary has received, since the date of the latest audited financial statements, a written notice of a claim or otherwise has any knowledge that the Intellectual Property Rights violate or infringe upon the rights of any Person, except as could not have or reasonably be expected to not have a Material Adverse Effect. To the knowledge of the Company, all such Intellectual Property Rights are enforceable and there is no existing infringement by another Person of any of the Intellectual Property Rights. The Company and its Subsidiaries have taken reasonable security measures to protect the secrecy, confidentiality and value of all of their intellectual properties, except where failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Insurance. The Company and the Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which the Company and the Subsidiaries are engaged, including, but not limited to, directors and officers insurance coverage at least equal $1 million. Neither the Company nor any 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 without a significant increase in cost.

(r) Transactions with Affiliates and Employees. Except as set forth on Schedule 3.1(r), none of the officers or directors of the Company or any Subsidiary and, to the knowledge of the Company, none of the employees of the Company or any Subsidiary is presently a party to any transaction with the Company or any Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from providing for the borrowing of money from or lending of money to, or otherwise requiring payments to or from any officer, director or such employee or, to the knowledge of the Company, any entity in which any officer, director, or any such employee has a substantial interest or is an officer, director, trustee, stockholder, member or partner, in each case in excess of $120,000 other than for (i) payment of salary or consulting fees for services rendered, (ii) reimbursement for expenses incurred on behalf of the Company and (iii) other employee benefits, including stock option agreements under any stock option plan of the Company.

(s) Sarbanes-Oxley; Internal Accounting Controls. The Company and the Subsidiaries are in compliance with any and all applicable requirements of the Sarbanes-Oxley Act of 2002 that are effective as of the date hereof, and any and all applicable rules and regulations promulgated by the Commission thereunder that are effective as of the date hereof and as of each Closing Date. The Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company and the Subsidiaries have established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and the Subsidiaries and designed such disclosure controls and procedures to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. The Company's certifying officers have evaluated the effectiveness of the disclosure controls and procedures of the Company and the Subsidiaries as of the end of the period covered by the most recently filed periodic report under the Exchange Act (such date, the "Evaluation Date"). The Company presented in its most recently filed periodic report under the Exchange Act the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the Evaluation Date. Since the Evaluation Date, there have been no changes in the internal control over financial reporting (as such term is defined in the Exchange Act) that have materially affected, or is reasonably likely to materially affect, the internal control over financial reporting of the Company and its Subsidiaries.

(t) Certain Fees. Except pursuant to that certain agreement by and among the Company and the Placement Agents, dated April 11, 2021, no brokerage or finder's fees or commissions are or will be payable by the Company or any Subsidiaries to any broker, financial advisor or consultant, finder, placement agent, investment banker, bank or other Person with respect to the transactions contemplated by the Transaction Documents. The Purchasers shall have no obligation with respect to any fees or with respect to any claims made by or on behalf of other Persons for fees of a type contemplated in this Section that may be due in connection with the transactions contemplated by the Transaction Documents.

(u) Private Placement. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, no registration under the Securities Act is required for the offer and sale of the Securities by the Company to the Purchasers as contemplated hereby. The issuance and sale of the Securities hereunder does not contravene the rules and regulations of the Trading Market.

(v) Investment Company. The Company is not, and is not an Affiliate of, and immediately after receipt of payment for the Securities, will not be or be an Affiliate of, an "investment company" within the meaning of the Investment Company Act of 1940, as amended. The Company shall conduct its business in a manner so that it will not become an "investment company" subject to registration under the Investment Company Act of 1940, as amended.

(w) Registration Rights. Other than each of the Purchasers, no Person has any right to cause the Company or any Subsidiary to effect the registration under the Securities Act of any securities of the Company or any Subsidiaries.

(x) Application of Takeover Protections. The Company and the 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 similar charter documents) or the laws of its state of incorporation that is or could become applicable to the Purchasers as a result of the Purchasers and the Company fulfilling their obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company's issuance of the Securities and the Purchasers' ownership of the Securities.

(y) Disclosure. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, the Company confirms that neither it nor any other Person acting on its behalf has provided any of the Purchasers or their agents or counsel with any information that it believes constitutes or might constitute material, non-public information. The Company understands and confirms that the Purchasers will rely on the foregoing representation in effecting transactions in securities of the Company. All of the disclosure furnished by or on behalf of the Company to the Purchasers regarding the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, including the Disclosure Schedules to this Agreement, is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. The press releases disseminated by the Company during the twelve months preceding the date of this Agreement taken as a whole do not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made and when made, not misleading. The Company acknowledges and agrees that no Purchaser makes or has made any representations or warranties with respect to the transactions contemplated hereby other than those specifically set forth in Section 3.2 hereof.

(z) No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Section 3.2, neither the Company, nor any of its Affiliates, nor any Person acting on its or 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 cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable shareholder approval provisions of any Trading Market on which any of the securities of the Company are listed or designated.

(aa) Solvency. Based on the consolidated financial condition of the Company as of each Closing Date, after giving effect to the receipt by the Company of the proceeds from the sale of the Securities hereunder, (i) the fair saleable value of the Company's assets exceeds the amount that will be required to be paid on or in respect of the Company's existing debts and other liabilities (including known contingent liabilities) as they mature, (ii) the Company's assets do not constitute unreasonably small capital to carry on its business as now conducted and as proposed to be conducted including its capital needs taking into account the particular capital requirements of the business conducted by the Company, consolidated and projected capital requirements and capital availability thereof, and (iii) the current cash flow of the Company, together with the proceeds the Company would receive, were it to liquidate all of its assets, after taking into account all anticipated uses of the cash, would be sufficient to pay all amounts on or in respect of its liabilities when such amounts are required to be paid. The Company does not intend to incur debts beyond its ability to pay such debts as they mature (taking into account the timing and amounts of cash to be payable on or in respect of its debt). The Company has no knowledge of any facts or circumstances which lead it to believe that it will file for reorganization or liquidation under the bankruptcy or reorganization laws of any jurisdiction within one year from the applicable Closing Date. Schedule 3.1(bb) sets forth as of the date hereof all outstanding secured and unsecured Indebtedness of the Company or any Subsidiary, or for which the Company or any Subsidiary has commitments. For the purposes of this Agreement, "Indebtedness" means (x) any liabilities for borrowed money or amounts owed in excess of $50,000 (other than trade accounts payable incurred in the ordinary course of business), (y) all guaranties, endorsements and other contingent obligations in respect of indebtedness of others, whether or not the same are or should be reflected in the Company's consolidated balance sheet (or the notes thereto), except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; and (z) the present value of any lease payments in excess of $50,000 due under leases required to be capitalized in accordance with GAAP. Neither the Company nor any Subsidiary is in default with respect to any Indebtedness.

(bb) Tax Status. Except for matters that would not, individually or in the aggregate, have or reasonably be expected to result in a Material Adverse Effect, the Company and its Subsidiaries each (i) has made or filed all United States federal, state and local income and all foreign income and franchise tax returns, reports and declarations required by any jurisdiction to which it is subject, (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 and (iii) has set aside on its books provision reasonably adequate for the payment of all material 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 or of any Subsidiary know of no basis for any such claim.

(cc) No General Solicitation. Neither the Company nor any Person acting on behalf of the Company has offered or sold any of the Securities by any form of general solicitation or general advertising. The Company has offered the Securities for sale only to the Purchasers and certain other "accredited investors" within the meaning of Rule 501 under the Securities Act.

(dd) Foreign Corrupt Practices. Neither the Company nor any Subsidiary, nor to the knowledge of the Company or any Subsidiary, any agent or other person acting on behalf of the Company or any Subsidiary, has (i) directly or indirectly, used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by the Company or any Subsidiary (or made by any person acting on its behalf of which the Company is aware) which is in violation of law or (iv) violated in any material respect any provision of FCPA.

(ee) Accountants. The Company's accounting firm is set forth on Schedule 3.1(ee) of the Disclosure Schedules. To the knowledge and belief of the Company, such accounting firm (i) is a registered public accounting firm as required by the Exchange Act and (ii) shall express its opinion with respect to the financial statements to be included in the Company's Annual Report for the fiscal year ending December 31, 2020.

(ff) Seniority. As of each Closing Date, no Indebtedness or other claim against the Company is senior to the Debentures or Preferred Stock in right of payment, whether with respect to interest or upon liquidation or dissolution, or otherwise, other than indebtedness secured by purchase money security interests (which is senior only as to underlying assets covered thereby) and capital lease obligations (which is senior only as to the property covered thereby).

(gg) No Disagreements with Accountants and Lawyers. There are no disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any fees owed to its accountants and lawyers which could affect the Company's ability to perform any of its obligations under any of the Transaction Documents.

(hh) Acknowledgment Regarding Purchasers' Purchase of Securities. The Company acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Company further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Company (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Company further represents to each Purchaser that the Company's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Company and its representatives.

(ii) Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding (except for Sections 3.2(g) and 4.15 hereof), it is understood and acknowledged by the Company that: (i) none of the Purchasers has been asked by the Company to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Company, or "derivative" securities based on securities issued by the Company or to hold the Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, Short Sales or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Company's publicly-traded securities, (iii) any Purchaser, and counter-parties in "derivative" transactions to which any such Purchaser is a party, directly or indirectly, may presently have a "short" position in the Common Stock and (iv) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction. The Company further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Underlying Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Company at and after the time that the hedging activities are being conducted. The Company acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

(jj) Regulation M Compliance. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company, other than, in the case of clauses (ii) and (iii), compensation paid to the Company's placement agent in connection with the placement of the Securities.

(kk) FDA. There is no pending, completed or, to the Company's knowledge, threatened, action (including any lawsuit, arbitration, or legal or administrative or regulatory proceeding, charge, complaint, or investigation) against the Company or any of its Subsidiaries, and none of the Company or any of its Subsidiaries has received any notice, warning letter or other communication from the U.S Food and Drug Administration ("FDA") or any other governmental entity, which (i) contests the premarket clearance, licensure, registration, or approval of, the uses of, the distribution of, the manufacturing or packaging of, the testing of, the sale of, or the labeling and promotion of any Pharmaceutical Product, (ii) withdraws its approval of, requests the recall, suspension, or seizure of, or withdraws or orders the withdrawal of advertising or sales promotional materials relating to, any Pharmaceutical Product, (iii) imposes a clinical hold on any clinical investigation by the Company or any of its Subsidiaries, (iv) enjoins production at any facility of the Company or any of its Subsidiaries, (v) enters or proposes to enter into a consent decree of permanent injunction with the Company or any of its Subsidiaries, or (vi) otherwise alleges any violation of any laws, rules or regulations by the Company or any of its Subsidiaries, and which, either individually or in the aggregate, would have a Material Adverse Effect. The properties, business and operations of the Company have been and are being conducted in all material respects in accordance with all applicable laws, rules and regulations of the FDA. The Company has not been informed by the FDA that the FDA will prohibit the marketing, sale, license or use in the United States of any product proposed to be developed, produced or marketed by the Company nor has the FDA expressed any concern as to approving or clearing for marketing any product being developed or proposed to be developed by the Company.

(ll) Stock Option Plans. Each stock option granted by the Company under the Company's stock option plan was granted (i) in accordance with the terms of the Company's stock option plan and (ii) with an exercise price at least equal to the fair market value of the Common Stock on the date such stock option would be considered granted under GAAP and applicable law. No stock option granted under the Company's stock option plan has been backdated. The Company has not knowingly granted, and there is no and has been no Company policy or practice to knowingly grant, stock options prior to, or otherwise knowingly coordinate the grant of stock options with, the release or other public announcement of material information regarding the Company or its Subsidiaries or their financial results or prospects.

(mm) Office of Foreign Assets Control. Neither the Company nor any Subsidiary nor, to the Company's knowledge, any director, officer, agent, employee or affiliate 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").

(nn) U.S. Real Property Holding Corporation. The Company is not and has never 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 Purchaser's request.

(oo) Bank Holding Company Act. Neither the Company nor any of its Subsidiaries or Affiliates is subject to the Bank Holding Company Act of 1956, as amended (the "BHCA") and to regulation by the Board of Governors of the Federal Reserve System (the "Federal Reserve"). Neither the Company nor any of its Subsidiaries or Affiliates owns or controls, directly or indirectly, five percent (5%) or more of the outstanding shares of any class of voting securities or twenty-five percent or more of the total equity of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve. Neither the Company nor any of its Subsidiaries or Affiliates exercises a controlling influence over the management or policies of a bank or any entity that is subject to the BHCA and to regulation by the Federal Reserve.

(pp) Money Laundering. The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the "Money Laundering Laws"), and no Action or Proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any Subsidiary with respect to the Money Laundering Laws is pending or, to the knowledge of the Company or any Subsidiary, threatened.

(qq) No Disqualification Events. With respect to the Securities to be offered and sold hereunder in reliance on Rule 506 under the Securities Act, none of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering hereunder, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of sale (each, an "Issuer Covered Person" and, together, "Issuer Covered Persons") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to the Purchasers a copy of any disclosures provided thereunder.

(rr) Other Covered Persons. Other than the Placement Agents, the Company is not aware of any person (other than any Issuer Covered Person) that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of any Securities.

(ss) Notice of Disqualification Events. The Company will notify the Purchasers and the Placement Agents in writing, prior to the applicable Closing Date of (i) any Disqualification Event relating to any Issuer Covered Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Issuer Covered Person.

3.2 Representations and Warranties of the Purchasers. Each Purchaser, for itself and for no other Purchaser, hereby represents and warrants as of the date hereof and as of each Closing Date to the Company as follows (unless as of a specific date therein, in which case they shall be accurate as of such date):

(a) Organization; Authority. Such Purchaser is either an individual or an entity duly incorporated or formed, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation with full right, corporate, partnership, limited liability company or similar power and authority to enter into and to consummate the transactions contemplated by the Transaction Documents and otherwise to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and performance by such Purchaser of the transactions contemplated by the Transaction Documents have been duly authorized by all necessary corporate, partnership, limited liability company or similar action, as applicable, on the part of such Purchaser. Each Transaction Document to which it is a party has been duly executed by such Purchaser, and when delivered by such Purchaser in accordance with the terms hereof, will constitute the valid and legally binding obligation of such Purchaser, enforceable against it in accordance with its terms, except (i) as limited by general equitable principles and applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies and (iii) insofar as indemnification and contribution provisions may be limited by applicable law.

(b) Own Account. Such Purchaser understands that the Securities are "restricted securities" and have not been registered under the Securities Act or any applicable state securities law and is acquiring the Securities as principal for its own account and not with a view to or for distributing or reselling such Securities or any part thereof in violation of the Securities Act or any applicable state securities law, has no present intention of distributing any of such Securities in violation of the Securities Act or any applicable state securities law and has no direct or indirect arrangement or understandings with any other persons to distribute or regarding the distribution of such Securities in violation of the Securities Act or any applicable state securities law (this representation and warranty not limiting such Purchaser's right to sell the Securities pursuant to the Registration Statement or otherwise in compliance with applicable federal and state securities laws). Such Purchaser is acquiring the Securities hereunder in the ordinary course of its business.

(c) Purchaser Status. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it converts any Debentures into Preferred Stock and/or converts any Preferred Stock into Conversion Shares it will be either: (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9), (a)(12), or (a)(13) under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act.

(d) Experience of Such Purchaser. Such Purchaser, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Securities, and has so evaluated the merits and risks of such investment. Such Purchaser is able to bear the economic risk of an investment in the Securities and, at the present time, is able to afford a complete loss of such investment.

(e) General Solicitation. Such Purchaser is not, to such Purchaser's knowledge, purchasing the Securities as a result of any advertisement, article, notice or other communication regarding the Securities published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to the knowledge of such Purchaser, any other general solicitation or general advertisement.

(f) Access to Information. Such Purchaser acknowledges that it has had the opportunity to review the Transaction Documents (including all exhibits and schedules thereto) and has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Securities and the merits and risks of investing in the Securities; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. Such Purchaser acknowledges and agrees that neither the Placement Agents nor any Affiliate of the Placement Agents has provided such Purchaser with any information or advice with respect to the Securities nor is such information or advice necessary or desired. Neither the Placement Agents nor any Affiliate has made or makes any representation as to the Company or the quality of the Securities and the Placement Agents and any Affiliate may have acquired non-public information with respect to the Company which such Purchaser agrees need not be provided to it. In connection with the issuance of the Securities to such Purchaser, neither the Placement Agents nor any of its Affiliates has acted as a financial advisor or fiduciary to such Purchaser.

The Company acknowledges and agrees that the representations contained in this Section 3.2 shall not modify, amend or affect such Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in any other Transaction Document or any other document or instrument executed and/or delivered in connection with this Agreement or the consummation of the transactions contemplated hereby.

ARTICLE IV.
OTHER AGREEMENTS OF THE PARTIES

4.1 Transfer Restrictions.

(a) The Securities may only be disposed of in compliance with state and federal securities laws. In connection with any transfer of Securities other than pursuant to an effective registration statement or Rule 144, to the Company or to an Affiliate of a Purchaser or in connection with a pledge as contemplated in Section 4.1(b), the Company may require the transferor thereof to provide to the Company an opinion of counsel selected by the transferor and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such transfer does not require registration of such transferred Securities under the Securities Act. As a condition of transfer, any such transferee shall agree in writing to be bound by the terms of this Agreement and the Registration Rights Agreement and shall have the rights and obligations of a Purchaser under this Agreement and the Registration Rights Agreement.

(b) The Purchasers agree to the imprinting, so long as is required by this Section 4.1, of a legend on any of the Securities in the following form:

[NEITHER] THIS SECURITY [NOR THE SECURITIES INTO WHICH THIS SECURITY IS [EXERCISABLE] [CONVERTIBLE]] HAS [NOT] BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO 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. THIS SECURITY [AND THE SECURITIES ISSUABLE UPON [EXERCISE] [CONVERSION] OF THIS SECURITY] MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT WITH A REGISTERED BROKER-DEALER OR OTHER LOAN WITH A FINANCIAL INSTITUTION THAT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501(a) UNDER THE SECURITIES ACT OR OTHER LOAN SECURED BY SUCH SECURITIES.

The Company acknowledges and agrees that a Purchaser may from time to time pledge pursuant to a bona fide margin agreement with a registered broker-dealer or grant a security interest in some or all of the Securities to a financial institution that is an "accredited investor" as defined in Rule 501(a) under the Securities Act and, if required under the terms of such arrangement, such Purchaser may transfer pledged or secured Securities to the pledgees or secured parties. Such a pledge or transfer would not be subject to approval of the Company and no legal opinion of legal counsel of the pledgee, secured party or pledgor shall be required in connection therewith. Further, no notice shall be required of such pledge. At the appropriate Purchaser's expense, the Company will execute and deliver such reasonable documentation as a pledgee or secured party of Securities may reasonably request in connection with a pledge or transfer of the Securities, including, if the Securities are subject to registration pursuant to the Registration Rights Agreement, the preparation and filing of any required prospectus supplement under Rule 424(b)(3) under the Securities Act or other applicable provision of the Securities Act to appropriately amend the list of Selling Stockholders (as defined in the Registration Rights Agreement) thereunder.

(c) Following the IPO Date the Underlying Shares shall not contain any legend (including the legend set forth in Section 4.1(b) hereof): (i) while a registration statement (including the Registration Statement) covering the resale of such security is effective under the Securities Act, (ii) following any sale of such Underlying Shares pursuant to Rule 144, (iii) if such Underlying Shares are eligible for sale under Rule 144, without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Shares and without volume or manner-of-sale restrictions] or (iv) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). The Company shall cause its counsel to issue a legal opinion to the Transfer Agent or the Purchaser promptly after the Effective Date if required by the Transfer Agent to effect the removal of the legend hereunder, or if requested by a Purchaser, respectively. If all or any shares of Preferred Stock is converted at a time when there is an effective registration statement to cover the resale of the Underlying Shares, or if such Underlying Shares may be sold under Rule 144 without the requirement for the Company to be in compliance with the current public information required under Rule 144 as to such Underlying Shares and without volume or manner-of-sale restrictions or if such legend is not otherwise required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission) then such Underlying Shares shall be issued free of all legends. The Company agrees that following the Effective Date or at such time as such legend is no longer required under this Section 4.1(c), it will, no later than the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined below) following the delivery by a Purchaser to the Company or the Transfer Agent of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend (such date, the "Legend Removal Date"), deliver or cause to be delivered to such Purchaser a certificate representing such shares that is free from all restrictive and other legends. **Notwithstanding anything herein to the contrary, upon conversion of the Debentures, the holder thereof may simultaneously deliver to the Company a Notice of Conversion of the underlying shares of Preferred Stock to be received upon such conversion and for all corporate purposes such holder shall be deemed to have become the holder of record of the Underlying Shares with respect to such Notice of Conversion, irrespective of the date of delivery of the Preferred Stock or Underlying Shares. In such event of a simultaneous conversion, the Company shall not be required to deliver a physical certificate representing the shares of Preferred Stock. The Legend Removal Date for such purposes shall be deemed to be the date that the Notice of Conversion of the shares of Preferred Stock is delivered to the Company**. 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 4. Following the IPO Date Underlying Shares subject to legend removal hereunder shall be transmitted by the Transfer Agent to the Purchaser by crediting the account of the Purchaser's prime broker with the Depository Trust Company System as directed by such Purchaser. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of a certificate representing Underlying Shares, as applicable, issued with a restrictive legend.

(d) In addition to such Purchaser's other available remedies, following the IPO Date, the Company shall pay to a Purchaser, in cash, (i) as partial liquidated damages and not as a penalty, for each $1,000 of Underlying Shares (based on the VWAP of the Common Stock on the date such Securities are submitted to the Transfer Agent) delivered for removal of the restrictive legend and subject to Section 4.1(c), $5 per Trading Day (increasing to $10 per Trading Day five (5) Trading Days after such damages have begun to accrue) for each Trading Day after the Legend Removal Date until such certificate is delivered without a legend and (ii) if the Company fails to (a) issue and deliver (or cause to be delivered) to a Purchaser by the Legend Removal Date a certificate representing the Securities so delivered to the Company by such Purchaser that is free from all restrictive and other legends and (b) if after the Legend Removal Date such Purchaser purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Purchaser of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock that such Purchaser anticipated receiving from the Company without any restrictive legend, then, an amount equal to the excess of such Purchaser's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including brokerage commissions and other out-of-pocket expenses, if any) (the "**Buy-In Price**") over the product of (A) such number of Underlying Shares that the Company was required to deliver to such Purchaser by the Legend Removal Date multiplied by (B) the lowest closing sale price of the Common Stock on any Trading Day during the period commencing on the date of the delivery by such Purchaser to the Company of the applicable Underlying Shares (as the case may be) and ending on the date of such delivery and payment under this clause (ii).

(e) Each Purchaser, severally and not jointly with the other Purchasers, agrees with the Company that such Purchaser will sell any Securities pursuant to either the registration requirements of the Securities Act, including any applicable prospectus delivery requirements, or an exemption therefrom, and that if Securities are sold pursuant to a Registration Statement, they will be sold in compliance with the plan of distribution set forth therein, and acknowledges that the removal of the restrictive legend from certificates representing Securities as set forth in this Section 4.1 is predicated upon the Company's reliance upon this understanding.

4.2 Acknowledgment of Dilution. The Company acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Company further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Company may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Company.

4.3 Furnishing of Information; Public Information.

(a) Following the IPO Date and until the earliest of the time that no Purchaser owns Securities, the Company covenants to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to the Exchange Act even if the Company is not then subject to the reporting requirements of the Exchange Act.

(b) At any time during the period commencing from the twelve (12) month anniversary of the IPO Date and ending at such time that all of the Securities may be sold without the requirement for the Company to be in compliance with Rule 144(c)(1) and otherwise without restriction or limitation pursuant to Rule 144, if the Company (i) shall fail for any reason to satisfy the current public information requirement under Rule 144(c) or (ii) has ever been an issuer described in Rule 144 (i)(1)(i) or becomes an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) (a "Public Information Failure") then, in addition to such Purchaser's other available remedies, the Company shall pay to a Purchaser, in cash, as partial liquidated damages and not as a penalty, by reason of any such delay in or reduction of its ability to sell the Securities, an amount in cash equal to two percent (2.0%) of the aggregate Subscription Amount of such Purchaser's Securities on the day of a Public Information Failure and on every thirtieth (30^{th}) day (pro rated for periods totaling less than thirty days) thereafter until the earlier of (a) the date such Public Information Failure is cured and (b) such time that such public information is no longer required for the Purchasers to transfer the Underlying Shares pursuant to Rule 144. The payments to which a Purchaser shall be entitled pursuant to this Section 4.3(b) are referred to herein as "Public Information Failure Payments." Public Information Failure Payments shall be paid on the earlier of (i) the last day of the calendar month during which such Public Information Failure Payments are incurred and (ii) the third (3^{rd}) Business Day after the event or failure giving rise to the Public Information Failure Payments is cured. In the event the Company fails to make Public Information Failure Payments in a timely manner, such Public Information Failure Payments shall bear interest at the rate of 1.5% per month (prorated for partial months) until paid in full. Nothing herein shall limit such Purchaser's right to pursue actual damages for the Public Information Failure, and such Purchaser shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief.

4.4 Integration. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Securities in a manner that would require the registration under the Securities Act of the sale of the Securities or that would be integrated with the offer or sale of the Securities for purposes of the rules and regulations of any Trading Market such that it would require shareholder approval prior to the closing of such other transaction unless shareholder approval is obtained before the closing of such subsequent transaction.

4.5 Conversion Procedures. Each of the form of Notice of Conversion included in the Debentures and Certificate of Designation set forth the totality of the procedures required of the Purchasers in order to convert the Debentures and Preferred Stock, as the case may be. Without limiting the preceding sentences, no ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required in order to convert the Debentures or shares of Preferred Stock, as the case may be. No additional legal opinion, other information or instructions shall be required of the Purchasers convert their Debentures or shares of Preferred Stock. The Company shall honor conversions of the Debentures and Preferred Stock and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

4.6 Securities Laws Disclosure; Publicity. From and after the IPO Date, the Company represents to the Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Company or any of its Subsidiaries, or any of their respective officers, directors, employees or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the issuance of such press release, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates on the one hand, and any of the Purchasers or any of their Affiliates on the other hand, shall terminate. The Company and each Purchaser shall consult with each other in issuing any other press releases with respect to the transactions contemplated hereby, and neither the Company nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Company, with respect to any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Company, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Company shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except (a) as required by federal securities law in connection with (i) any registration statement contemplated by the Registration Rights Agreement and (ii) the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations, in which case the Company shall provide the Purchasers with prior notice of such disclosure permitted under this clause (b).

4.7 Shareholder Rights Plan. No claim will be made or enforced by the Company or, with the consent of the Company, any other Person, that any Purchaser is an "Acquiring Person" under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Company, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Company and the Purchasers.

4.8 Non-Public Information. Following the IPO Date, except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.6, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that constitutes, or the Company reasonably believes constitutes, material non-public information, unless prior thereto such Purchaser shall have consented to the receipt of such information and agreed with the Company to keep such information confidential. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company. Following the IPO Date, to the extent that the Company, any of its Subsidiaries, or any of their respective officers, director, agents, employees or Affiliates delivers any material, non-public information to a Purchaser without such Purchaser's consent, the Company hereby covenants and agrees that such Purchaser shall not have any duty of confidentiality to the Company, any of its Subsidiaries, or any of their respective officers, directors, agents, employees or Affiliates, or a duty to the Company, any of its Subsidiaries or any of their respective officers, directors, agents, employees or Affiliates not to trade on the basis of, such material, non-public information, provided that the Purchaser shall remain subject to applicable law. To the extent that any notice provided pursuant to any Transaction Document constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Company understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

4.9 Use of Proceeds. Except as set forth on Schedule 4.9 attached hereto, the Company shall use the net proceeds from the sale of the Securities hereunder for working capital purposes and shall not use such proceeds: (a) for the satisfaction of any portion of the Company's debt (other than payment of trade payables in the ordinary course of the Company's business and prior practices), (b) for the redemption of any Common Stock or Common Stock Equivalents, (c) for the settlement of any outstanding litigation or (d) in violation of FCPA or OFAC regulations.

4.10 Indemnification of Purchasers. Subject to the provisions of this Section 4.10, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a "Purchaser Party") harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs and expenses, including all judgments, amounts paid in settlements, court costs and reasonable attorneys' fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (a) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents or (b) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates, by any stockholder of the Company who is not an Affiliate of such Purchaser Party, with respect to any of the transactions contemplated by the Transaction Documents (unless such action is solely based upon a material breach of such Purchaser Party's representations, warranties or covenants under the Transaction Documents or any agreements or understandings such Purchaser Party may have with any such stockholder or any violations by such Purchaser Party of state or federal securities laws or any conduct by such Purchaser Party which is finally judicially determined to constitute fraud, gross negligence or willful misconduct). If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall be responsible for the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company's prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is attributable to any Purchaser Party's breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 4.10 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

4.11 Reservation and Listing of Securities.

(a) The Company shall maintain a reserve of the Required Minimum from its duly authorized shares of Common Stock for issuance pursuant to the Transaction Documents in such amount as may then be required to fulfill its obligations in full under the Transaction Documents.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Minimum on such date, then the Board of Directors shall use commercially reasonable efforts to amend the Company's certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Minimum at such time, as soon as possible and in any event not later than the 75th day after such date.

(c) The Company shall, if applicable on the IPO Date: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock at least equal to the Required Minimum on the date of such application, (ii) take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market on the IPO Date, (iii) provide to the Purchasers evidence of such listing or quotation and (iv) maintain the listing or quotation of such Common Stock on any date at least equal to the Required Minimum on such date on such Trading Market or another Trading Market. On and after the IPO Date, the Company agrees to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Company or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Company or such other established clearing corporation in connection with such electronic transfer.

4.12 Participation in Future Financing.

(a) From the date hereof until the 180th day following the IPO Date, upon any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents for cash consideration, Indebtedness or a combination of units thereof (a "Subsequent Financing"), each Purchaser shall have the right to participate in up to an amount of the Subsequent Financing equal to, in respect of the IPO, $10 million and in respect of any other Subsequent Financing provided that the Purchasers have invested at least $10 million in the IPO, up to 25% of the aggregate amount raised thereunder (the "Participation Maximum") on the same terms, conditions and price provided for in the Subsequent Financing.

(b) At least five (5) Trading Days prior to the closing of the Subsequent Financing, the Company shall deliver to each Purchaser a written notice of its intention to effect a Subsequent Financing ("Pre-Notice"), which Pre-Notice shall ask such Purchaser if it wants to review the details of such financing (such additional notice, a "Subsequent Financing Notice"). Upon the request of a Purchaser, and only upon a request by such Purchaser, for a Subsequent Financing Notice, the Company shall promptly, but no later than one (1) Trading Day after such request, deliver a Subsequent Financing Notice to such Purchaser. The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected and shall include a term sheet or similar document relating thereto as an attachment.

(c) Any Purchaser desiring to participate in such Subsequent Financing must provide written notice to the Company by not later than 5:30 p.m. (New York City time) on the fifth (5th) Trading Day after all of the Purchasers have received the Pre-Notice that such Purchaser is willing to participate in the Subsequent Financing, the amount of such Purchaser's participation, and representing and warranting that such Purchaser has such funds ready, willing, and available for investment on the terms set forth in the Subsequent Financing Notice. If the Company receives no such notice from a Purchaser as of such fifth (5th) Trading Day, such Purchaser shall be deemed to have notified the Company that it does not elect to participate.

(d) If by 5:30 p.m. (New York City time) on the fifth (5th) Trading Day after all of the Purchasers have received the Pre-Notice, notifications by the Purchasers of their willingness to participate in the Subsequent Financing (or to cause their designees to participate) is, in the aggregate, less than the total amount of the Subsequent Financing, then the Company may effect the remaining portion of such Subsequent Financing on the terms and with the Persons set forth in the Subsequent Financing Notice.

(e) If by 5:30 p.m. (New York City time) on the fifth (5th) Trading Day after all of the Purchasers have received the Pre-Notice, the Company receives responses to a Subsequent Financing Notice from Purchasers seeking to purchase more than the aggregate amount of the Participation Maximum, each such Purchaser shall have the right to purchase its Pro Rata Portion (as defined below) of the Participation Maximum. "Pro Rata Portion" means the ratio of (x) the Subscription Amount of Securities purchased hereunder by a Purchaser participating under this Section 4.12 and (y) the sum of the aggregate Subscription Amounts of Securities purchased hereunder by all Purchasers participating under this Section 4.12.

(f) The Company must provide the Purchasers with a second Subsequent Financing Notice, and the Purchasers will again have the right of participation set forth above in this Section 4.12, if the Subsequent Financing subject to the initial Subsequent Financing Notice is not consummated for any reason on the terms set forth in such Subsequent Financing Notice within thirty (30) Trading Days after the date of the initial Subsequent Financing Notice.

(g) The Company and each Purchaser agree that if any Purchaser elects to participate in the Subsequent Financing, the transaction documents related to the Subsequent Financing shall not include any term or provision that, directly or indirectly, will, or is intended to, exclude one or more of the Purchasers from participating in a Subsequent Financing, including, but not limited to, provisions whereby such Purchaser shall be required to agree to any restrictions on trading as to any securities of the Company or be required to consent to any amendment to or termination of, or grant any waiver, release or the like under or in connection with, this Agreement, without the prior written consent of such Purchaser.

(h) Notwithstanding anything to the contrary in this Section 4.12 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 Financing has been abandoned or shall publicly disclose its intention to issue the securities in the Subsequent Financing, 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 Subsequent Financing Notice. If by such tenth (10th) Business Day, no public disclosure regarding a transaction with respect to the Subsequent Financing 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 deemed to be in possession of any material, non-public information with respect to the Company or any of its Subsidiaries.

(i) Notwithstanding the foregoing, this Section 4.12 shall not apply in respect of an Exempt Issuance.

4.13 Subsequent Equity Sales.

(a) From the date hereof until the 180th day following the IPO Date, neither the Company nor any Subsidiary shall (i) issue, enter into any agreement to issue or announce the issuance or proposed issuance of any shares of Common Stock or Common Stock Equivalents or (ii) file any registration statement or any amendment or supplement thereto, in each case other than as contemplated pursuant to the Registration Rights Agreement.

(b) From the date hereof until such time as no Purchaser holds any of the Securities, the Company shall be prohibited from effecting or entering into an agreement to effect any issuance by the Company or any of its Subsidiaries of Common Stock or Common Stock Equivalents (or a combination of units thereof) involving a Variable Rate Transaction. "Variable Rate Transaction" means a transaction in which the Company (i) issues or sells any debt or equity securities that are convertible into, exchangeable or exercisable for, or include the right to receive, additional shares of Common Stock either (A) at a conversion price, exercise price or exchange rate or other price that is based upon, and/or varies with, the trading prices of or quotations for the shares of Common Stock at any time after the initial issuance of such debt or equity securities or (B) with a conversion, exercise or exchange price that is subject to being reset at some future date after the initial issuance of such debt or equity security or upon the occurrence of specified or contingent events directly or indirectly related to the business of the Company or the market for the Common Stock or (ii) enters into, or effects a transaction under, any agreement, including, but not limited to, an equity line of credit, whereby the Company may issue securities at a future determined price. Any Purchaser shall be entitled to obtain injunctive relief against the Company to preclude any such issuance, which remedy shall be in addition to any right to collect damages.

(c) Notwithstanding the foregoing, this Section 4.13 shall not apply in respect of an Exempt Issuance or the securities issued and issuable in the IPO, except that no Variable Rate Transaction shall be an Exempt Issuance.

4.14 Equal Treatment of Purchasers. No consideration (including any modification of any Transaction Document) shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of the Transaction Documents unless the same consideration is also offered to all of the parties to such Transaction Documents. Further, the Company shall not make any payment of principal or interest on the Debentures in amounts which are disproportionate to the respective principal amounts outstanding on the Debentures at any applicable time. For clarification purposes, this provision constitutes a separate right granted to each Purchaser by the Company and negotiated separately by each Purchaser, and is intended for the Company to treat the Purchasers as a class and shall not in any way be construed as the Purchasers acting in concert or as a group with respect to the purchase, disposition or voting of Securities or otherwise.

4.15 Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Company's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Company pursuant to the initial press release as described in Section 4.6, such Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in the Disclosure Schedules. Notwithstanding the foregoing, and notwithstanding anything contained in this Agreement to the contrary, the Company expressly acknowledges and agrees that (i) no Purchaser makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Company after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6, (ii) no Purchaser shall be restricted or prohibited from effecting any transactions in any securities of the Company in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the initial press release as described in Section 4.6 and (iii) no Purchaser shall have any duty of confidentiality or duty not to trade in the securities of the Company to the Company or its Subsidiaries after the issuance of the initial press release as described in Section 4.6. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

4.16 Lock-Up Agreements. The Company shall not amend, modify, waive or terminate any provision of any of the Lock-Up Agreements except to extend the term of the lock-up period and shall enforce the provisions of each Lock-Up Agreement in accordance with its terms. If any party to a Lock-Up Agreement breaches any provision of a Lock-Up Agreement, the Company shall promptly use its best efforts to seek specific performance of the terms of such Lock-Up Agreement.

4.17 Form D; Blue Sky Filings. The Company agrees to timely file a Form D with respect to the Securities as required under Regulation D and to provide a copy thereof, promptly upon request of any Purchaser. The Company shall take such action as the Company shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers at each Closing under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Purchaser.

4.18 D&O Insurance. On or before the IPO Date the Company shall have obtained directors and officers insurance coverage at least equal $3 million.

ARTICLE V.
MISCELLANEOUS

5.1 Termination. This Agreement may be terminated by any Purchaser, as to such Purchaser's obligations hereunder only and without any effect whatsoever on the obligations between the Company and the other Purchasers, by written notice to the other parties, if the First Closing has not been consummated on or before the fifth (5^{th}) Trading Day following the date hereof, provided, however, that no such termination will affect the right of any party to sue for any breach by any other party (or parties).

5.2 Fees and Expenses. At the First Closing, the Company has agreed to pay to the lead Purchaser an origination fee equal to $100,000, less the fees and expenses of EGS. The Company shall deliver to each Purchaser, prior to each Closing, a completed and executed copy of the Closing Statement, attached hereto as Annex A. Except as expressly set forth in the Transaction Documents to the contrary, each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any conversion or exercise notice delivered by a Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Securities to the Purchasers.

5.3 Entire Agreement. The Transaction Documents, together with the exhibits and schedules thereto, contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into such documents, exhibits and schedules.

5.4 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment at the email address as set forth on the signature pages attached hereto at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or email attachment as set forth on the signature pages attached hereto on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2^{nd}) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth on the signature pages attached hereto.

5.5 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed, in the case of an amendment, by the Company and Purchasers which purchased at least 50.1% in interest of the Debentures and Preferred Stock based on the initial Subscription Amounts hereunder (or, prior to each Closing, the Company and each Purchaser) or, in the case of a waiver, by the party against whom enforcement of any such waived provision is sought, provided that if any amendment, modification or waiver disproportionately and adversely impacts a Purchaser (or group of Purchasers), the consent of such disproportionately impacted Purchaser (or group of Purchasers) shall also be required. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right. Any proposed amendment or waiver that disproportionately, materially and adversely affects the rights and obligations of any Purchaser relative to the comparable rights and obligations of the other Purchasers shall require the prior written consent of such adversely affected Purchaser. Any amendment effected in accordance with this Section 5.5 shall be binding upon each Purchaser and holder of Securities and the Company.

5.6 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

5.7 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of each Purchaser (other than by merger). Any Purchaser may assign any or all of its rights under this Agreement to any Person to whom such Purchaser assigns or transfers any Securities, provided that such transferee agrees in writing to be bound, with respect to the transferred Securities, by the provisions of the Transaction Documents that apply to the "Purchasers."

5.8 No Third Party Beneficiaries. The Placement Agents shall be the third-party beneficiary of the representations and warranties of the Company in Section 3.1 and the representations and warranties of the Purchasers in Section 3.2. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.10 and this Section 5.8.

5.9 Governing Law. All questions concerning the construction, validity, enforcement and interpretation of the Transaction Documents shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal Proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Agreement and any other Transaction Documents (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City 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 (including with respect to the enforcement of any of the Transaction Documents), and hereby irrevocably waives, and agrees not to assert in any Action or Proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such Action or Proceeding is improper or is an inconvenient venue for such Proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such 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 this 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 other manner permitted by law. If any party shall commence an Action or Proceeding to enforce any provisions of the Transaction Documents, then, in addition to the obligations of the Company under Section 4.10, the prevailing party in such Action or Proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such Action or Proceeding.

5.10 Survival. The representations and warranties contained herein shall survive each Closing and the delivery of the Securities.

5.11 Execution. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

5.12 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

5.13 Rescission and Withdrawal Right. Notwithstanding anything to the contrary contained in (and without limiting any similar provisions of) any of the other Transaction Documents, whenever any Purchaser exercises a right, election, demand or option under a Transaction Document and the Company does not timely perform its related obligations within the periods therein provided, then such Purchaser may rescind or withdraw, in its sole discretion from time to time upon written notice to the Company, any relevant notice, demand or election in whole or in part without prejudice to its future actions and rights; provided, however, that, in the case of a rescission of a conversion of a Debenture or Preferred Stock, the applicable Purchaser shall be required to return any shares of Preferred Stock (if delivered) and/or Common Stock, as applicable, subject to any such rescinded conversion notice.

5.14 Replacement of Securities. If any certificate or instrument evidencing any Securities is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Securities.

5.15 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, each of the Purchasers and the Company will be entitled to specific performance under the Transaction Documents. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in the Transaction Documents and hereby agree to waive and not to assert in any Action for specific performance of any such obligation the defense that a remedy at law would be adequate.

5.16 Payment Set Aside. To the extent that the Company makes a payment or payments to any Purchaser pursuant to any Transaction Document or a Purchaser enforces or exercises its rights 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, 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.

5.17 Usury. To the extent it may lawfully do so, the Company hereby agrees not to insist upon or plead or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, usury laws wherever enacted, now or at any time hereafter in force, in connection with any Action or Proceeding that may be brought by any Purchaser in order to enforce any right or remedy under any Transaction Document. Notwithstanding any provision to the contrary contained in any Transaction Document, it is expressly agreed and provided that the total liability of the Company under the Transaction Documents for payments in the nature of interest shall not exceed the maximum lawful rate authorized under applicable law (the "Maximum Rate"), and, without limiting the foregoing, in no event shall any rate of interest or default interest, or both of them, when aggregated with any other sums in the nature of interest that the Company may be obligated to pay under the Transaction Documents exceed such Maximum Rate. It is agreed that if the maximum contract rate of interest allowed by law and applicable to the Transaction Documents is increased or decreased by statute or any official governmental action subsequent to the date hereof, the new maximum contract rate of interest allowed by law will be the Maximum Rate applicable to the Transaction Documents from the effective date thereof forward, unless such application is precluded by applicable law. If under any circumstances whatsoever, interest in excess of the Maximum Rate is paid by the Company to any Purchaser with respect to indebtedness evidenced by the Transaction Documents, such excess shall be applied by such Purchaser to the unpaid principal balance of any such indebtedness or be refunded to the Company, the manner of handling such excess to be at such Purchaser's election.

5.18 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 or non-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 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 with respect to such obligations or the transactions contemplated by the Transaction Documents. 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 the 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. Each Purchaser has been represented by its own separate legal counsel in its review and negotiation of the Transaction Documents. For reasons of administrative convenience only, each Purchaser and its respective counsel have chosen to communicate with the Company through EGS. EGS does not represent any of the Purchasers and only represents the Placement Agents. The Company has elected to provide all Purchasers with the same terms and Transaction Documents for the convenience of the Company and not because it was required or requested to do so by any of the Purchasers. 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.

5.19 Liquidated Damages. The Company's obligations to pay any partial liquidated damages or other amounts owing under the Transaction Documents is a continuing obligation of the Company and shall not terminate until all unpaid partial liquidated damages and other amounts have been paid notwithstanding the fact that the instrument or security pursuant to which such partial liquidated damages or other amounts are due and payable shall have been canceled.

5.20 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

5.21 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise the Transaction Documents and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Transaction Documents or any amendments thereto. In addition, each and every reference to share prices and shares of Common Stock in any Transaction Document shall be subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

5.22 **WAIVER OF JURY TRIAL. IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

BLUE JAY DIAGNOSTICS, INC.

By: /s/ Neil Dey
Name: Neil Dey
Title: CEO

Address for Notice:

Neil Dey
Chief Executive Officer
Bluejay Diagnostics, Inc.
360 Massachusetts Avenue | Suite 203 |
Acton, MA 01720
Tel: (978) 631-0310
Mobile: [***]
FAX: (978) 263-1801
Email: [***]

With a copy to (which shall not constitute notice):

Ralph V. De Martino
Partner
Schiff Hardin LLP
901 K Street, Suite 700
Washington, DC 20001
Tel: (202) 724-6848
Mobile: [***]
Fax: (202) 778-6460
Email: rdemartino@schiffhardin.com

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOR PURCHASER FOLLOWS]

[PURCHASER SIGNATURE PAGES TO BLUEJAY SECURITIES PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have caused this Securities Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

Name of Purchaser: _____

Signature of Authorized Signatory of Purchaser: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

Email Address of Authorized Signatory: _____

Address for Notice to Purchaser:

Address for Delivery of Securities to Purchaser (if not same as address for notice):

Subscription Amount: $_____

Principal Amount of Debentures:

Shares of Preferred Stock issuable:

Underlying Shares issuable:

EIN Number: _____

[SIGNATURE PAGES CONTINUE]

Exhibit 10.8

REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this "Agreement") is made and entered into as of June 7, 2021, between Bluejay Diagnostics, a Delaware corporation (the "Company"), and each of the several purchasers signatory hereto (each such purchaser, a "Purchaser" and, collectively, the "Purchasers").

This Agreement is made pursuant to the Securities Purchase Agreement, dated as of the date hereof, between the Company and each Purchaser (the "Purchase Agreement").

The Company and each Purchaser hereby agrees as follows:

1. Definitions.

Capitalized terms used and not otherwise defined herein that are defined in the Purchase Agreement shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"Advice" shall have the meaning set forth in Section 6(c).

"Effectiveness Date" means, with respect to the Initial Registration Statement required to be filed hereunder, the earlier of (a) the IPO Date and (b) November 23, 2021.

"Effectiveness Period" shall have the meaning set forth in Section 2(a).

"Event" shall have the meaning set forth in Section 2(d).

"Event Date" shall have the meaning set forth in Section 2(d).

"Filing Date" means, with respect to the Initial Registration Statement required hereunder, the 45th calendar day following the date hereof and, with respect to any additional Registration Statements which may be required pursuant to Section 2(c) or Section 3(c), the earliest practical date on which the Company is permitted by SEC Guidance to file such additional Registration Statement related to the Registrable Securities.

"Holder" or "Holders" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"Indemnified Party" shall have the meaning set forth in Section 5(c).

"Indemnifying Party" shall have the meaning set forth in Section 5(c).

"Initial Registration Statement" means the initial Registration Statement filed pursuant to this Agreement.

"Losses" shall have the meaning set forth in Section 5(a).

"Plan of Distribution" shall have the meaning set forth in Section 2(a).

"Prospectus" means the prospectus included in a Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated by the Commission pursuant to the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

"Registrable Securities" means, as of any date of determination, (a) all of the shares of Common Stock then issued and issuable upon conversion in full of the Preferred Stock (assuming on such date the shares of Preferred Stock are converted in full without regard to any conversion limitations therein) and (b) any securities issued or then issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to the foregoing; provided, however, that any such Registrable Securities shall cease to be Registrable Securities (and the Company shall not be required to maintain the effectiveness of any, or file another, Registration Statement hereunder with respect thereto) for so long as (a) a Registration Statement with respect to the sale of such Registrable Securities is declared effective by the Commission under the Securities Act and such Registrable Securities have been disposed of by the Holder in accordance with such effective Registration Statement, (b) such Registrable Securities have been previously sold in accordance with Rule 144, or (c) such securities become eligible for resale without volume or manner-of-sale restrictions and without current public information pursuant to Rule 144 as set forth in a written opinion letter to such effect, addressed, delivered and acceptable to the Transfer Agent and the affected Holders (assuming that such securities and any securities issuable upon exercise, conversion or exchange of which, or as a dividend upon which, such securities were issued or are issuable, were at no time held by any Affiliate of the Company.

"Registration Statement" means any registration statement required to be filed hereunder pursuant to Section 2(a) and any additional registration statements contemplated by Section 2(c) or Section 3(c), including (in each case) the Prospectus, amendments and supplements to any such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in any such registration statement.

"Rule 415" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Rule 424" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"Selling Stockholder Questionnaire" shall have the meaning set forth in Section 3(a).

"SEC Guidance" means (i) any publicly-available written or oral guidance of the Commission staff, or any comments, requirements or requests of the Commission staff and (ii) the Securities Act.

2. Shelf Registration.

(a) On or prior to each Filing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all of the Registrable Securities that are not then registered on an effective Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415. Each Registration Statement filed hereunder shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on another appropriate form in accordance herewith, subject to the provisions of Section 2(e)) and shall contain (unless otherwise directed by at least 85% in interest of the Holders) substantially the "Plan of Distribution" attached hereto as Annex A and substantially the "Selling Stockholder" section attached hereto as Annex B; provided, however, that no Holder shall be required to be named as an "underwriter" without such Holder's express prior written consent. Subject to the terms of this Agreement, the Company shall use its best efforts to cause a Registration Statement filed under this Agreement (including, without limitation, under Section 3(c)) to be declared effective under the Securities Act as promptly as possible after the filing thereof, but in any event no later than the applicable Effectiveness Date, and shall use its best efforts to keep such Registration Statement continuously effective under the Securities Act until the date that all Registrable Securities covered by such Registration Statement (i) have been sold, thereunder or pursuant to Rule 144, or (ii) may be sold without volume or manner-of-sale restrictions pursuant to Rule 144 and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144, as determined by the counsel to the Company pursuant to a written opinion letter to such effect, addressed and acceptable to the Transfer Agent and the affected Holders (the "Effectiveness Period"). The Company shall telephonically request effectiveness of a Registration Statement as of 5:00 p.m. (New York City time) on a Trading Day. The Company shall immediately notify the Holders via facsimile or by e-mail of the effectiveness of a Registration Statement on the same Trading Day that the Company telephonically confirms effectiveness with the Commission, which shall be the date requested for effectiveness of such Registration Statement. The Company shall, by 9:30 a.m. (New York City time) on the Trading Day after the effective date of such Registration Statement, file a final Prospectus with the Commission as required by Rule 424. Failure to so notify the Holder within one (1) Trading Day of such notification of effectiveness or failure to file a final Prospectus as foresaid shall be deemed an Event under Section 2(d).

(b) Notwithstanding the registration obligations set forth in Section 2(a), if the Commission informs the Company that all of the Registrable Securities cannot, as a result of the application of Rule 415, be registered for resale as a secondary offering on a single registration statement, the Company agrees to promptly inform each of the Holders thereof and use its commercially reasonable efforts to file amendments to the Initial Registration Statement as required by the Commission, covering the maximum number of Registrable Securities permitted to be registered by the Commission, on Form S-3 or such other form available to register for resale the Registrable Securities as a secondary offering, subject to the provisions of Section 2(e); with respect to filing on Form S-3 or other appropriate form, and subject to the provisions of Section 2(d) with respect to the payment of liquidated damages; provided, however, that prior to filing such amendment, the Company shall be obligated to use diligent efforts to advocate with the Commission for the registration of all of the Registrable Securities in accordance with the SEC Guidance, including without limitation, Compliance and Disclosure Interpretation 612.09.

(c) Notwithstanding any other provision of this Agreement and subject to the payment of liquidated damages pursuant to Section 2(d), if the Commission or any SEC Guidance sets forth a limitation on the number of Registrable Securities permitted to be registered on a particular Registration Statement as a secondary offering (and notwithstanding that the Company used diligent efforts to advocate with the Commission for the registration of all or a greater portion of Registrable Securities), unless otherwise directed in writing by a Holder as to its Registrable Securities, the number of Registrable Securities to be registered on such Registration Statement will be reduced as follows:

a. First, the Company shall reduce or eliminate any securities to be included other than Registrable Securities; and

b. Second, the Company shall reduce Registrable Securities represented by Conversion Shares (applied, in the case that some Conversion Shares may be registered, to the Holders on a pro rata basis based on the total number of unregistered Conversion Shares held by such Holders).

In the event of a cutback hereunder, the Company shall give the Holder at least five (5) Trading Days prior written notice along with the calculations as to such Holder's allotment. In the event the Company amends the Initial Registration Statement in accordance with the foregoing, the Company will use its best efforts to file with the Commission, as promptly as allowed by Commission or SEC Guidance provided to the Company or to registrants of securities in general, one or more registration statements on Form S-3 or such other form available to register for resale those Registrable Securities that were not registered for resale on the Initial Registration Statement, as amended.

(d) If: (i) the Initial Registration Statement is not filed on or prior to its Filing Date (if the Company files the Initial Registration Statement without affording the Holders the opportunity to review and comment on the same as required by Section 3(a) herein, the Company shall be deemed to have not satisfied this clause (i)), or (ii) the Company fails to file with the Commission a request for acceleration of a Registration Statement in accordance with Rule 461 promulgated by the Commission pursuant to the Securities Act, within five Trading Days of the date that the Company is notified (orally or in writing, whichever is earlier) by the Commission that such Registration Statement will not be "reviewed" or will not be subject to further review, or (iii) prior to the effective date of a Registration Statement, the Company fails to file a pre-effective amendment and otherwise respond in writing to comments made by the Commission in respect of such Registration Statement within ten (10) calendar days after the receipt of comments by or notice from the Commission that such amendment is required in order for such Registration Statement to be declared effective, or (iv) a Registration Statement registering for resale all of the Registrable Securities is not declared effective by the Commission by the Effectiveness Date of the Initial Registration Statement, or (v) after the effective date of a Registration Statement, such Registration Statement ceases for any reason to remain continuously effective as to all Registrable Securities included in such Registration Statement, or the Holders are otherwise not permitted to utilize the Prospectus therein to resell such Registrable Securities, for more than ten (10) consecutive calendar days or more than an aggregate of fifteen (15) calendar days (which need not be consecutive calendar days) during any 12-month period (any such failure or breach being referred to as an "Event", and for purposes of clauses (i) and (iv), the date on which such Event occurs, and for purpose of clause (ii) the date on which such five (5) Trading Day period is exceeded, and for purpose of clause (iii) the date which such ten (10) calendar day period is exceeded, and for purpose of clause (v) the date on which such ten (10) or fifteen (15) calendar day period, as applicable, is exceeded being referred to as "Event Date"), then, in addition to any other rights the Holders may have hereunder or under applicable law, on each such Event Date and on each monthly anniversary of each such Event Date (if the applicable Event shall not have been cured by such date) until the applicable Event is cured, the Company shall pay to each Holder an amount in cash, as partial liquidated damages and not as a penalty, equal to the product of 2.0% multiplied by the aggregate Subscription Amount paid by such Holder pursuant to the Purchase Agreement. If the Company fails to pay any partial liquidated damages pursuant to this Section in full within seven days after the date payable, the Company will pay interest thereon at a rate of 18% per annum (or such lesser maximum amount that is permitted to be paid by applicable law) to the Holder, accruing daily from the date such partial liquidated damages are due until such amounts, plus all such interest thereon, are paid in full. The partial liquidated damages pursuant to the terms hereof shall apply on a daily pro rata basis for any portion of a month prior to the cure of an Event.

(e) If Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall (i) register the resale of the Registrable Securities on another appropriate form and (ii) undertake to register the Registrable Securities on Form S-3 as soon as such form is available, provided that the Company shall maintain the effectiveness of the Registration Statement then in effect until such time as a Registration Statement on Form S-3 covering the Registrable Securities has been declared effective by the Commission.

(f) Notwithstanding anything to the contrary contained herein, in no event shall the Company be permitted to name any Holder or affiliate of a Holder as any Underwriter without the prior written consent of such Holder.

3. Registration Procedures.

In connection with the Company's registration obligations hereunder, the Company shall:

(a) Not less than five (5) Trading Days prior to the filing of each Registration Statement and not less than one (1) Trading Day prior to the filing of any related Prospectus or any amendment or supplement thereto (including any document that would be incorporated or deemed to be incorporated therein by reference), the Company shall (i) furnish to each Holder copies of all such documents proposed to be filed, which documents (other than those incorporated or deemed to be incorporated by reference) will be subject to the review of such Holders, and (ii) cause its officers and directors, counsel and independent registered public accountants to respond to such inquiries as shall be necessary, in the reasonable opinion of respective counsel to each Holder, to conduct a reasonable investigation within the meaning of the Securities Act. The Company shall not file a Registration Statement or any such Prospectus or any amendments or supplements thereto to which the Holders of a majority of the Registrable Securities shall reasonably object in good faith, provided that, the Company is notified of such objection in writing no later than five (5) Trading Days after the Holders have been so furnished copies of a Registration Statement or one (1) Trading Day after the Holders have been so furnished copies of any related Prospectus or amendments or supplements thereto. Each Holder agrees to furnish to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "Selling Stockholder Questionnaire") on a date that is not less than two (2) Trading Days prior to the Filing Date or by the end of the fourth (4^{th}) Trading Day following the date on which such Holder receives draft materials in accordance with this Section.

(b) (i) Prepare and file with the Commission such amendments, including post-effective amendments, to a Registration Statement and the Prospectus used in connection therewith as may be necessary to keep a Registration Statement continuously effective as to the applicable Registrable Securities for the Effectiveness Period and prepare and file with the Commission such additional Registration Statements in order to register for resale under the Securities Act all of the Registrable Securities, (ii) cause the related Prospectus to be amended or supplemented by any required Prospectus supplement (subject to the terms of this Agreement), and, as so supplemented or amended, to be filed pursuant to Rule 424, (iii) respond as promptly as reasonably possible to any comments received from the Commission with respect to a Registration Statement or any amendment thereto and provide as promptly as reasonably possible to the Holders true and complete copies of all correspondence from and to the Commission relating to a Registration Statement (provided that, the Company shall excise any information contained therein which would constitute material non-public information regarding the Company or any of its Subsidiaries), and (iv) comply in all material respects with the applicable provisions of the Securities Act and the Exchange Act with respect to the disposition of all Registrable Securities covered by a Registration Statement during the applicable period in accordance (subject to the terms of this Agreement) with the intended methods of disposition by the Holders thereof set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) If during the Effectiveness Period, the number of Registrable Securities at any time exceeds 100% of the number of shares of Common Stock then registered in a Registration Statement, then the Company shall file as soon as reasonably practicable, but in any case prior to the applicable Filing Date, an additional Registration Statement covering the resale by the Holders of not less than the number of such Registrable Securities.

(d) Notify the Holders of Registrable Securities to be sold (which notice shall, pursuant to clauses (iii) through (vi) hereof, be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made) as promptly as reasonably possible (and, in the case of (i)(A) below, not less than one (1) Trading Day prior to such filing) and (if requested by any such Person) confirm such notice in writing no later than one (1) Trading Day following the day (i)(A) when a Prospectus or any Prospectus supplement or post-effective amendment to a Registration Statement is proposed to be filed, (B) when the Commission notifies the Company whether there will be a "review" of such Registration Statement and whenever the Commission comments in writing on such Registration Statement, and (C) with respect to a Registration Statement or any post-effective amendment, when the same has become effective, (ii) of any request by the Commission or any other federal or state governmental authority for amendments or supplements to a Registration Statement or Prospectus or for additional information, (iii) of the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of a Registration Statement covering any or all of the Registrable Securities or the initiation of any Proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any Proceeding for such purpose, (v) of the occurrence of any event or passage of time that makes the financial statements included in a Registration Statement ineligible for inclusion therein or any statement made in a Registration Statement or Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires any revisions to a Registration Statement, Prospectus or other documents so that, in the case of a Registration Statement or the Prospectus, as the case may be, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (vi) of the occurrence or existence of any pending corporate development with respect to the Company that the Company believes may be material and that, in the determination of the Company, makes it not in the best interest of the Company to allow continued availability of a Registration Statement or Prospectus; provided, however, that in no event shall any such notice contain any information which would constitute material, non-public information regarding the Company or any of its Subsidiaries.

(e) Use its best efforts to avoid the issuance of, or, if issued, obtain the withdrawal of (i) any order stopping or suspending the effectiveness of a Registration Statement, or (ii) any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction, at the earliest practicable moment.

(f) Furnish to each Holder, without charge, at least one conformed copy of each such Registration Statement and each amendment thereto, including financial statements and schedules, all documents incorporated or deemed to be incorporated therein by reference to the extent requested by such Person, and all exhibits to the extent requested by such Person (including those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission, provided that any such item which is available on the EDGAR system (or successor thereto) need not be furnished in physical form.

(g) Subject to the terms of this Agreement, the Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto, except after the giving of any notice pursuant to Section 3(d).

(h) Prior to any resale of Registrable Securities by a Holder, use its commercially reasonable efforts to register or qualify or cooperate with the selling Holders in connection with the registration or qualification (or exemption from the Registration or qualification) of such Registrable Securities for the resale by the Holder under the securities or Blue Sky laws of such jurisdictions within the United States as any Holder reasonably requests in writing, to keep each registration or qualification (or exemption therefrom) effective during the Effectiveness Period and to do any and all other acts or things reasonably necessary to enable the disposition in such jurisdictions of the Registrable Securities covered by each Registration Statement, provided that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified, subject the Company to any material tax in any such jurisdiction where it is not then so subject or file a general consent to service of process in any such jurisdiction.

(i) If requested by a Holder, cooperate with such Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to a Registration Statement, which certificates shall be free, to the extent permitted by the Purchase Agreement, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holder may request.

(j) Upon the occurrence of any event contemplated by Section 3(d), as promptly as reasonably possible under the circumstances taking into account the Company's good faith assessment of any adverse consequences to the Company and its stockholders of the premature disclosure of such event, prepare a supplement or amendment, including a post-effective amendment, to a Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, and file any other required document so that, as thereafter delivered, neither a Registration Statement nor such Prospectus will contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with clauses (iii) through (vi) of Section 3(d) above to suspend the use of any Prospectus until the requisite changes to such Prospectus have been made, then the Holders shall suspend use of such Prospectus. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company shall be entitled to exercise its right under this Section 3(j) to suspend the availability of a Registration Statement and Prospectus, subject to the payment of partial liquidated damages otherwise required pursuant to Section 2(d), for a period not to exceed 60 calendar days (which need not be consecutive days) in any 12-month period.

(k) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission under the Securities Act and the Exchange Act, including, without limitation, Rule 172 under the Securities Act, file any final Prospectus, including any supplement or amendment thereof, with the Commission pursuant to Rule 424 under the Securities Act, promptly inform the Holders in writing if, at any time during the Effectiveness Period, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to deliver a Prospectus in connection with any disposition of Registrable Securities and take such other actions as may be reasonably necessary to facilitate the registration of the Registrable Securities hereunder.

(l) The Company shall use its best efforts to maintain eligibility for use of Form S-3 (or any successor form thereto) for the registration of the resale of Registrable Securities.

(m) The Company may require each selling Holder to furnish to the Company a certified statement as to the number of shares of Common Stock beneficially owned by such Holder and, if required by the Commission, the natural persons thereof that have voting and dispositive control over the shares. During any periods that the Company is unable to meet its obligations hereunder with respect to the registration of the Registrable Securities solely because any Holder fails to furnish such information within three Trading Days of the Company's request, any liquidated damages that are accruing at such time as to such Holder only shall be tolled and any Event that may otherwise occur solely because of such delay shall be suspended as to such Holder only, until such information is delivered to the Company.

4. Registration Expenses. All fees and expenses incident to the performance of or compliance with, this Agreement by the Company shall be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of the Company's counsel and independent registered public accountants) (A) with respect to filings made with the Commission, (B) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, and (C) in compliance with applicable state securities or Blue Sky laws reasonably agreed to by the Company in writing (including, without limitation, fees and disbursements of counsel for the Company in connection with Blue Sky qualifications or exemptions of the Registrable Securities), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities), (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company so desires such insurance, and (vi) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder. In no event shall the Company be responsible for any broker or similar commissions of any Holder or, except to the extent provided for in the Transaction Documents, any legal fees or other costs of the Holders.

5. Indemnification.

(a) Indemnification by the Company. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the officers, directors, members, partners, agents, brokers (including brokers who offer and sell Registrable Securities as principal as a result of a pledge or any failure to perform under a margin call of Common Stock), investment advisors and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each of them, each Person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors, members, stockholders, partners, agents and employees (and any other Persons with a functionally equivalent role of a Person holding such titles, notwithstanding a lack of such title or any other title) of each such controlling Person, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "Losses"), as incurred, arising out of or relating to (1) any untrue or alleged untrue statement of a material fact contained in a Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading or (2) any violation or alleged violation by the Company of the Securities Act, the Exchange Act or any state securities law, or any rule or regulation thereunder, in connection with the performance of its obligations under this Agreement, except to the extent, but only to the extent, that (i) such untrue statements or omissions are based solely upon information regarding such Holder furnished in writing to the Company by such Holder expressly for use therein, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement, such Prospectus or in any amendment or supplement thereto (it being understood that the Holder has approved Annex A hereto for this purpose) or (ii) in the case of an occurrence of an event of the type specified in Section 3(d)(iii)-(vi), the use by such Holder of an outdated, defective or otherwise unavailable Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated, defective or otherwise unavailable for use by such Holder and prior to the receipt by such Holder of the Advice contemplated in Section 6(c). The Company shall notify the Holders promptly of the institution, threat or assertion of any Proceeding arising from or in connection with the transactions contemplated by this Agreement of which the Company is aware. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such indemnified person and shall survive the transfer of any Registrable Securities by any of the Holders in accordance with Section 6(f).

(b) Indemnification by Holders. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, agents and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, agents or employees of such controlling Persons, to the fullest extent permitted by applicable law, from and against all Losses, as incurred, to the extent arising out of or based solely upon: any untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus, or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or supplement thereto, in light of the circumstances under which they were made) not misleading (i) to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by such Holder to the Company expressly for inclusion in such Registration Statement or such Prospectus or (ii) to the extent, but only to the extent, that such information relates to such Holder's information provided in the Selling Stockholder Questionnaire or the proposed method of distribution of Registrable Securities and was reviewed and expressly approved in writing by such Holder expressly for use in a Registration Statement (it being understood that the Holder has approved Annex A hereto for this purpose), such Prospectus or in any amendment or supplement thereto. In no event shall the liability of a selling Holder be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue statement or omission) received by such Holder upon the sale of the Registrable Securities included in the Registration Statement giving rise to such indemnification obligation.

(c) Conduct of Indemnification Proceedings. If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall promptly notify the Person from whom indemnity is sought (the "Indemnifying Party") in writing, and the Indemnifying Party shall have the right to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof, provided that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have materially and adversely prejudiced the Indemnifying Party.

An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses, (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding, or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and counsel to the Indemnified Party shall reasonably believe that a material conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and the reasonable fees and expenses of no more than one separate counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending Proceeding in respect of which any Indemnified Party is a party, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

Subject to the terms of this Agreement, all reasonable fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within ten Trading Days of written notice thereof to the Indemnifying Party, provided that the Indemnified Party shall promptly reimburse the Indemnifying Party for that portion of such fees and expenses applicable to such actions for which such Indemnified Party is finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) not to be entitled to indemnification hereunder.

(d) Contribution. If the indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party or insufficient to hold an Indemnified Party harmless for any Losses, then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in this Agreement, any reasonable attorneys' or other fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5(d) were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. In no event shall the contribution obligation of a Holder of Registrable Securities be greater in amount than the dollar amount of the proceeds (net of all expenses paid by such Holder in connection with any claim relating to this Section 5 and the amount of any damages such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission) received by it upon the sale of the Registrable Securities giving rise to such contribution obligation.

The indemnity and contribution agreements contained in this Section are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Miscellaneous.

(a) Remedies. In the event of a breach by the Company or by a Holder of any of their respective obligations under this Agreement, each Holder or the Company, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. Each of the Company and each Holder agrees that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by it of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall not assert or shall waive the defense that a remedy at law would be adequate.

(b) No Piggyback on Registrations; Prohibition on Filing Other Registration Statements. Except as set forth on Schedule 6(b) attached hereto, neither the Company nor any of its security holders (other than the Holders in such capacity pursuant hereto) may include securities of the Company in any Registration Statements other than the Registrable Securities. The Company shall not file any other registration statements until all Registrable Securities are registered pursuant to a Registration Statement that is declared effective by the Commission, provided that this Section 6(b) shall not prohibit the Company from filing amendments to registration statements filed prior to the date of this Agreement so long as no new securities are registered on any such existing registration statements.

(c) Discontinued Disposition. By its acquisition of Registrable Securities, each Holder agrees that, upon receipt of a notice from the Company of the occurrence of any event of the kind described in Section 3(d)(iii) through (vi), such Holder will forthwith discontinue disposition of such Registrable Securities under a Registration Statement until it is advised in writing (the "Advice") by the Company that the use of the applicable Prospectus (as it may have been supplemented or amended) may be resumed. The Company will use its best efforts to ensure that the use of the Prospectus may be resumed as promptly as is practicable. The Company agrees and acknowledges that any periods during which the Holder is required to discontinue the disposition of the Registrable Securities hereunder shall be subject to the provisions of Section 2(d).

(d) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Holders of 50.1% or more of the then outstanding Registrable Securities (for purposes of clarification, this includes any Registrable Securities issuable upon exercise or conversion of any Security), provided that, if any amendment, modification or waiver disproportionately and adversely impacts a Holder (or group of Holders), the consent of such disproportionately impacted Holder (or group of Holders) shall be required. If a Registration Statement does not register all of the Registrable Securities pursuant to a waiver or amendment done in compliance with the previous sentence, then the number of Registrable Securities to be registered for each Holder shall be reduced pro rata among all Holders and each Holder shall have the right to designate which of its Registrable Securities shall be omitted from such Registration Statement. Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of a Holder or some Holders and that does not directly or indirectly affect the rights of other Holders may be given only by such Holder or Holders of all of the Registrable Securities to which such waiver or consent relates; provided, however, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the first sentence of this Section 6(d). No consideration shall be offered or paid to any Person to amend or consent to a waiver or modification of any provision of this Agreement unless the same consideration also is offered to all of the parties to this Agreement.

(e) Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be delivered as set forth in the Purchase Agreement.

(f) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of each of the parties and shall inure to the benefit of each Holder. The Company may not assign (except by merger) its rights or obligations hereunder without the prior written consent of all of the Holders of the then outstanding Registrable Securities. Each Holder may assign their respective rights hereunder in the manner and to the Persons as permitted under Section 5.7 of the Purchase Agreement.

(g) No Inconsistent Agreements. Neither the Company nor any of its Subsidiaries has entered, as of the date hereof, nor shall the Company or any of its Subsidiaries, on or after the date of this Agreement, enter into any agreement with respect to its securities, that would have the effect of impairing the rights granted to the Holders in this Agreement or otherwise conflicts with the provisions hereof. Except as set forth on Schedule 6(i), neither the Company nor any of its Subsidiaries has previously entered into any agreement granting any registration rights with respect to any of its securities to any Person that have not been satisfied in full.

(h) Execution and Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together 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 party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

(i) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be determined in accordance with the provisions of the Purchase Agreement.

(j) Cumulative Remedies. The remedies provided herein are cumulative and not exclusive of any other remedies provided by law.

(k) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(l) Headings. The headings in this Agreement are for convenience only, do not constitute a part of the Agreement and shall not be deemed to limit or affect any of the provisions hereof.

(m) Independent Nature of Holders' Obligations and Rights. The obligations of each Holder hereunder are several and not joint with the obligations of any other Holder hereunder, and no Holder shall be responsible in any way for the performance of the obligations of any other Holder hereunder. Nothing contained herein or in any other agreement or document delivered at any closing, and no action taken by any Holder pursuant hereto or thereto, shall be deemed to constitute the Holders as a partnership, an association, a joint venture or any other kind of group or entity, or create a presumption that the Holders are in any way acting in concert or as a group or entity with respect to such obligations or the transactions contemplated by this Agreement or any other matters, and the Company acknowledges that the Holders are not acting in concert or as a group, and the Company shall not assert any such claim, with respect to such obligations or transactions. Each Holder shall be entitled to protect and enforce its rights, including without limitation the rights arising out of this Agreement, and it shall not be necessary for any other Holder to be joined as an additional party in any proceeding for such purpose. The use of a single agreement with respect to the obligations of the Company contained was solely in the control of the Company, not the action or decision of any Holder, and was done solely for the convenience of the Company and not because it was required or requested to do so by any Holder. It is expressly understood and agreed that each provision contained in this Agreement is between the Company and a Holder, solely, and not between the Company and the Holders collectively and not between and among Holders.

****

(Signature Pages Follow)

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

BLUEJAY DIAGNOSTICS, INC.

By: /s/ Neil Dey
Name: Neil Dey
Title: Chief Executive Officer

[SIGNATURE PAGE OF HOLDERS FOLLOWS]

[SIGNATURE PAGE OF HOLDERS TO BLUEJAY RRA]

Name of Holder: _____

Signature of Authorized Signatory of Holder: _____

Name of Authorized Signatory: _____

Title of Authorized Signatory: _____

[SIGNATURE PAGES CONTINUE]

Exhibit 10.9

AMENDMENT TO LICENSE AND SUPPLY AGREEMENT

This amendment ("**Amendment**"), dated as of July 21, 2021, is to that certain License and Supply Agreement (the "**Agreement**") dated October 6, 2020 by and between Toray Industries, Inc. ("**Toray**") and Bluejay Diagnostics, Inc. ("**Bluejay**"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

WHEREAS, Toray and Bluejay have mutually agreed to modify the termination and confidentiality provisions of the Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and mutual agreements herein contained, and intending to be legally bound herein, the Parties hereto agree as follows:

1. Section 17.2 of the Agreement is hereby amended and restated as follows:

"If Bluejay does not satisfy the commercial sales requirements of Section 3.4 and 3.5 of this Agreement, Toray may terminate this Agreement by providing Bluejay prior written notice."

2. A new Section 20.4 of the Agreement is hereby added as follows:

"Notwithstanding Section 20.3, Toray consents to the filing of this Agreement, as amended, as an exhibit to any filings made by Bluejay with the U.S. Securities and Exchange Commission, and consents to the description of the terms of this Agreement being disclosed by Bluejay in any filings made with the U.S. Securities and Exchange Commission."

3. Except as expressly set forth herein, this Amendment shall not by implication or otherwise alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Agreement, all of which are ratified and affirmed in all respects and shall continue in full force and effect.

4. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective authorized signatories as of the date first indicated below.

Toray Industries, Inc.

By: /s/ Jun Hayakawa
Name: Jun Hayakawa
Title: General Manager, Pharmaceuticals & Medical Products Business Planning Dept.

Bluejay Diagnostics, Inc.

By: /s/ Neil Dey
Name: Neil Dey
Title: CEO

Exhibit 14.1

BLUEJAY DIAGNOSTICS, INC.
CODE OF ETHICS

Introduction

Bluejay Diagnostics, Inc. and each of its subsidiaries (collectively, the "Company") are committed to the highest standards of ethics and business conduct. The Company conducts its business as a good corporate citizen and complies with all laws, rules and regulations applicable to it or the conduct of its business. This commitment and standard of conduct governs our relationships with customers, suppliers, shareholders, competitors, the communities in which we operate, and with each other as employees at every organizational level. Maintaining the highest ethical standards at all levels within our organization is critical for our success as a corporation. This Code of Ethics ("Code") applies to the corporation as a whole and to all employees, directors, officers, as well as consultants and vendors.

The Code is an expression of our core values and represents a framework for decision making. To this end, all of us are responsible for understanding the Code and acting in accordance with it. The Code cannot and is not intended to cover every applicable law, rule or regulation or provide answers to all questions that may arise; for that, we must ultimately rely on each employee's, officer's and director's good sense of what is right, including a sense of when it is proper to seek guidance from others with respect to the appropriate course of conduct. The Company maintains an open door policy for resolving issues that arise in the workplace. Employees are encouraged to first discuss any questions regarding any law, rule, regulation, or principle discussed in this Code, which may govern business conduct, with the employee's immediate supervisor. If open communication with the employees' supervisor does not resolve the issue or makes the employee uncomfortable, the employee should subsequently consult his or her next level supervisor. If this does not result in satisfactory resolution of the issue, the employee should consult the Company's Chief Financial Officer. Additionally, employees are encouraged to use the Company's Ethics Hot Line at to report any ethics violation. Due to the sensitive nature of the reporting, calls to the Hot Line can be made anonymously.

The Code does not in any way constitute an employment contract or an assurance of continued employment. It is for the sole and exclusive benefit of the Company and may not be used or relied upon by any other party. The Company may modify or repeal the provisions of the Code or adopt a new Code at any time it deems appropriate, with or without notice.

The Code must be strictly observed and failure to do so could result in disciplinary action, up to and including termination. This Code applies equally to all employees, officers, directors, consultants and vendors of the Company. The Company encourages employees to seek or to ask for advice from their supervisors when ethical issues arise in the workplace.

Compliance with Laws, Rules, Regulations and Policies

We all are expected to act honestly and maintain the highest standards of ethics and business conduct, consistent with the professional image of the Company. We are required to comply fully with all laws, rules and regulations affecting the Company's business and its conduct in business matters. We are expected to uphold both the letter and the spirit of the law and the Company's policies.

The Company conducts its business in the United States and internationally. Applicable laws, rules, regulations, customs and social requirements may be different in other countries from those in the United States. It is the Company's policy to abide by the national and local laws of our host nations and communities. In the case of any conflict between the laws of another country and the United States, or in any situation where an employee has a doubt as to the proper course of conduct, it is incumbent upon an employee to immediately consult his or her supervisor.

Confidential, Proprietary Information

One of the Company's most valuable assets is information. Employees, officers and directors should maintain the confidentiality of information (whether specifically regarded as proprietary or not) entrusted to them not only by the Company, but also by suppliers, former employers, customers and others related to our business. Confidential information includes all non-public information that might be of use to our competitors or harmful to the Company, or its customers or suppliers, if disclosed. Examples of confidential information include, but are not limited to, trade secrets, new product or marketing plans, customer lists, employee lists, research and development ideas, manufacturing processes, or acquisition or divestiture prospects.

Employees, officers and directors should take steps to safeguard confidential information by keeping such information secure, limiting access to such information to those employees who have a "need to know" in order to do their job, and avoiding discussion of confidential information in public areas, for example, in elevators, on planes, and on mobile phones. Employees, officers and directors must safeguard documents with confidential information, and should take steps to ensure proper disposal of documents with confidential information through shredding or other appropriate means, so that such documents cannot be acquired by those without proper authorization. Confidential information may be disclosed to others when disclosure is authorized by the Company or legally mandated. The obligation to preserve confidential information is ongoing, even after termination of employment.

Use of Inside Information/ Insider Trading

Federal and state law prohibits the use of "material inside information" when trading in or recommending the Company securities. In accordance with applicable federal and state law, no employee, officer or director may engage in transactions in the Company stock (whether for their own account, for the Company's account or otherwise) while in possession of material inside information ("Insider Trading") relating to the Company. Further, no employee, officer or director who is in possession of material inside information may communicate such information to third parties who may use such information in the decision to purchase or sell Company stock ("Tipping"). These restrictions also apply to securities of other companies if an employee, officer or director learns of material inside information in the course of his or her duties for the Company. In addition to violating the Company policy, Insider Trading and Tipping are illegal.

What constitutes "material inside information" is a complex legal question, but is generally considered to be information not available to the general public, which a reasonable investor contemplating a purchase of the Company's stock would be substantially likely to take into account in making his or her investment decision. Such information includes information relating to a stock split and other actions relating to capital structure, major management changes, contemplated acquisitions or divestitures, and information concerning earnings or other financial information. Such information continues to be "inside" information until two business days following the broad disclosure to the general public.

Any person who is in possession of material inside information is deemed to be an "insider." This would include directors, officers, employees (management and non- management), as well as spouses, friends or brokers who may have acquired such information directly or indirectly from an insider "tip."

Substantial penalties may be assessed against people who trade while in possession of material inside information and can also be imposed upon companies and so-called controlling persons such as officers and directors who fail to take appropriate steps to prevent or detect insider trading violations by their employees or subordinates. To avoid severe consequences, employees should review this policy and the Insider Trading Policy before trading in securities and consult with the Company's chief financial officer if any doubts exist as to what constitutes "material inside information."

Conflicts of Interest

Employees must base business decisions and actions on the best interests of the Company. Accordingly, the Company policy prohibits conflicts of interest. A conflict of interest occurs when an individual's personal interest interferes in any way—or even appears to interfere—with the interests of the Company as a whole. A conflict situation can arise when an employee or a member of an employee's family takes actions or has interests that may make it difficult to perform his or her work objectively and effectively. Conflicts of interest also arise when an employee or a member of his or her family or close personal friend, receives improper personal benefits as a result of his or her position in the Company. Family members include an employee's spouse, child, stepchild, grandchild, parent, step-parent, grandparent, sibling, in-laws and anyone living in an employee's household and/or economically dependent upon an employee, including all adoptive relationships.

Such conflicts of interest can undermine our business judgment and our responsibility to the Company and threaten the Company's business and reputation. Accordingly, all apparent, potential, and actual conflicts of interest should be scrupulously avoided. Though it is not possible to list every activity or situation that might raise a conflict of interest issue(s), the list below is included to help you recognize some of the more significant ones:

- **Corporate Opportunities.** Taking personally opportunities that are discovered through the use of corporate property, information or position (unless the Company has already been offered the opportunity and turned it down), or using corporate property, information or position for personal gain or competing with the Company. Such action is prohibited. In addition, directors owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises.

- **Gifts.** Receiving from, or giving to, a supplier, customer or competitor, gifts, gratuities, special allowances, inappropriate discounts or other benefits of significant value (as defined below) that may have the potential to influence a business decision. The purpose of business entertainment and gifts in a commercial setting is to create goodwill and sound working relationships, not to gain unfair advantage with suppliers or customers. Gifts and entertainment of more than a significant value, that is, other than as is customary (i.e. holiday gift baskets or vendor attended entertainment), must be pre- approved, by a vice president or an officer of a higher level, other than the recipient of the gift. In addition, any item that costs greater than $500 will be deemed to be of significant value and require pre-approval. If an employee is unsure regarding any gifts received or given, he or she should seek approval from his or her vice president. Any vice president seeking approval shall seek such approval from the Chief Financial Officer.

- **Loans**. Providing loans to, or guarantees of obligations of, employees or their family members. Such activity will not be allowed without the prior written approval of the Chief Financial Officer, and if appropriate, the Board of Directors or a committee of the Board of Directors. The Company will not extend, maintain or arrange any personal loan (or the equivalent thereof) to or for any director or executive officer or members of their families, or make guarantees of any of their obligations.

- **Outside Activity.** Engaging in any outside activity that materially detracts from or interferes with the performance by an employee of his or her services to the Company.

- **Outside Employment.** Serving as a director, representative, employee, partner, consultant or agent of, or providing services to, an organization or individual that is a supplier, customer or otherwise seeking to do or doing business with the Company or a competitor of the Company.

- **Personal Investments.** Directly or indirectly, owning stock in, being a partner or creditor of, or having another financial interest in, or being engaged in the management of, a supplier, contractor, customer, distributor or competitor; provided that ownership of less than 1% in a publicly traded company shall not be included in the foregoing.

All potential and actual conflicts of interest or material transactions or relationships that reasonably could be expected to give rise to such a conflict or the appearance of such a conflict must be promptly communicated to the employee's supervisor. Employees should take care to report conflicts to a person who they believe is not involved in the matter giving rise to the conflict.

If a director believes he or she has an actual or potential conflict of interest with the Company, the director should notify the Chief Financial Officer and the Chairman of the Audit Committee (or any successor committee thereto) as promptly as practicable. The director should not participate in any decision by the Board of Directors, or any Committee of the Board of Directors, that in any way relates to the matter that gives rise to the conflict of interest or potential conflict of interest until the issue has been resolved to the satisfaction of the Chairman of the Audit Committee or the entire Board of Directors.

Any employee who has a doubt about whether a conflict of interest exists after consulting this provision of the Code, should contact their supervisor so that he or she can be assisted in making that determination.

Quality of Disclosures

The federal and state securities laws impose continuing disclosure requirements on the Company, and require the Company to regularly file certain reports with and make certain submissions (the "Reports") to the Securities and Exchange Commission and the stock exchange on which the Company's securities are traded and disseminate them to its shareholders. Such Reports must comply with all applicable legal and exchange requirements and may not contain material misstatements or omit material facts.

All employees, officers and directors directly or indirectly involved in preparing such Reports, any employees, officers or directors who regularly communicate with the press, investors and analysts concerning the Company, and all representatives who assist the Company in preparing such Reports and communications, will ensure that such Reports and communications are (i) full, fair, timely, accurate and understandable and (ii) meet all legal requirements. This policy applies to all public disclosure of material information about the Company, including written disclosures, oral statements, visual presentations, press conferences and media calls.

Protection and Proper Use of Assets

Proper and efficient use of assets of the Company, suppliers, customers and others, such as electronic communication systems, vehicles, cell phones, information (proprietary or otherwise), facilities and equipment, as well as intangible assets, is the responsibility of each employee, officer and director. Employees, officers and directors must not inappropriately use such assets for non-Company business or personal profit for themselves or others unless such use is permitted under an approved written policy, compensation or expense reimbursement program. In addition, employees, officers and directors must act in a manner to protect the Company's assets from loss, damage, misuse, theft, removal and waste. Finally, employees, officers and directors must ensure that such assets are used only for legitimate business purposes.

Reporting of any Illegal or Unethical Behavior

Any employee who is aware of any illegal or unethical behavior or who believes that an applicable law, rule or regulation or the Code has been violated, must promptly report the matter to his or her supervisor. If this does not result in a satisfactory conclusion, the employee should contact the Chief Financial Officer or Chief Executive Officer. Employees are also encouraged to use the Company's Ethics Hot Line at . Due to the sensitive nature of the reporting, calls to the Hot Line can be made anonymously.

In addition, an employee who has a concern about the Company's accounting practices, internal controls or auditing matters, should follow the same reporting procedures outlined above, provided that to the extent such concerns involve the Chief Financial Officer, the employee should not contact such officer. Employees should take care to report violations to a person who they believe is not involved in the matter giving rise to the violation. All reports of violations will be promptly investigated and, if appropriate, remedied, and if legally required, immediately reported to the proper governmental authority.

Employees will be expected to cooperate in assuring that violations of the Code are promptly addressed. The Company will protect confidentiality of those making reports of possible misconduct to the maximum extent possible, consistent with the requirements necessary to conduct an effective investigation and the law. Any form of retaliation against someone for reporting an activity that he or she in good faith believes to be a violation of any law, rule, regulation, or this Code will not be tolerated. Any supervisor or other employee intimidating or imposing sanctions on an employee for reporting a matter will be disciplined up to and including termination.

It is illegal to retaliate against a person, including any action regarding his employment, for providing truthful information to a law enforcement officer relating to the possible commission of any federal offense. Employees, officers or directors who believe that they have been retaliated against by the Company, its employees, officers, directors, contractors, subcontractors or agents, for providing information to or assisting in an investigation conducted by a federal agency, Congress or a person with supervisory authority over the employee (or another employee who has the authority to investigate or terminate misconduct) in connection with conduct that the employee, officer or director reasonably believes constitutes a violation of federal criminal fraud statutes or any rule or regulation of the Securities and Exchange Commission, may file a complaint with the Secretary of Labor, or in federal court if the Secretary does not take action in a timely manner. The Company encourages employees to report any retaliation for reporting violations of law to their supervisor or the Chief Financial Officer in addition to the appropriate government authorities.

Responding to Improper Conduct

This Code will be enforced on a uniform basis for everyone, without regard to an employee's position within the Company. If an employee violates the Company's Code, he or she will be subject to disciplinary action. Supervisors and managers of a disciplined employee may also be subject to disciplinary action for their failure to properly oversee an employee's conduct, or for retaliation against an employee who reports a violation(s).

The Company's response to misconduct will depend upon a number of factors, including whether the improper behavior involved illegal conduct. Disciplinary action may include, but is not limited to, reprimands and warnings, probation, suspension, demotion, reassignment, reduction in salary or immediate termination. Employees should be aware that certain actions and omissions prohibited by the Code might be crimes that could lead to individual criminal prosecution and, upon conviction, to fines and imprisonment.

Employment Practices/ Equal Employment Opportunity

People are the greatest asset of the Company. The Company strives to maintain a workplace free of discrimination or harassment. This includes, but is not limited to, discrimination or harassment based on race, color, sex, national origin, religion, age, sexual orientation, veteran status or disability. Retaliation against employees who report such conduct is illegal and will not be tolerated.

The Company also strives to provide a safe working environment for all of its employees. Employees are encouraged to provide any thoughts or ideas on how to improve workplace safety by contacting your supervisor or your respective safety representative.

Waivers

Employees, officers and directors should understand that waivers or exceptions to our Code will be granted only in advance and only under exceptional circumstances. A waiver of this Code for any executive officer or director may be made only by the Board of Directors or a committee of the Board of Directors and must be promptly disclosed to shareholders in accordance with applicable law and exchange requirements.

Exhibit 21.1

List of Subsidiaries

Bluejay Spinco, LLC – Delaware limited liability company – wholly owned

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Amendment No. 1 to the Registration Statement (No. 333-260029) on Form S-1 of Bluejay Diagnostics, Inc. of our report dated June 30, 2021, relating to the financial statements of Bluejay Diagnostics, Inc., appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to our Firm under the caption "Experts" in such Prospectus.

/s/ Wolf & Company, P.C.

Wolf & Company, P.C.
Boston, Massachusetts
October 25, 2021

Exhibit 99.1

BLUEJAY DIAGNOSTICS, INC.

CHARTER OF THE AUDIT COMMITTEE

MEMBERSHIP

The Audit Committee (the "**Committee**") of the board of directors (the "**Board**") of Bluejay Diagnostics, Inc. (the "**Company**") shall consist of three or more directors. Each member of the Committee shall be independent in accordance with the requirements of Rule 10A-3 of the Securities Exchange Act of 1934, as amended, and the rules of the Nasdaq Stock Market. No member of the Committee can have participated in the preparation of the Company's or any of its subsidiaries' financial statements at any time during the past three years.

Each member of the Committee must be able to read and understand fundamental financial statements, including the Company's balance sheet, income statement and cash flow statement. At least one member of the Committee must have past employment experience in finance or accounting, requisite professional certification in accounting or other comparable experience or background that leads to financial sophistication. At least one member of the Committee must be an "audit committee financial expert" as defined in Item 407(d) (5) (ii) of Regulation S-K. A person who satisfies this definition of audit committee financial expert will also be presumed to have financial sophistication.

The members of the Committee shall be appointed by the Board based on recommendations from the nominating and corporate governance committee of the Board. The members of the Committee shall serve for such term or terms as the Board may determine or until earlier resignation or death. The Board may remove any member from the Committee at any time with or without cause.

PURPOSE

The primary purpose of the Committee is to oversee the quality and integrity of the Company's accounting and financial reporting processes and the audit of the Company's financial statements. To fulfill this obligation, the Committee relies on:

- management for the preparation and accuracy of the Company's financial statements;
- management for establishing effective internal controls and procedures to ensure the Company's compliance with accounting standards, financial reporting procedures and applicable laws and regulations;
- management for establishing an effective anti-fraud program; and
- The Company's independent auditors for an unbiased, diligent audit or review, as applicable, of the Company's financial statements.

DUTIES AND RESPONSIBILITIES

The Committee shall have the following authority and responsibilities:

1. To (a) select and retain an independent registered public accounting firm to act as the Company's independent auditors for the purpose of auditing the Company's annual financial statements, books, records, and accounts, (b) set the compensation of the Company's independent auditors, (c) oversee the work done by the Company's independent auditors, (d) terminate the Company's independent auditors, if necessary, and (e) perform an annual evaluation of the performance of the independent auditors. The independent auditors shall report directly to the Committee.

2. To select, retain, compensate, oversee and terminate, if necessary, any other registered public accounting firm engaged for the purpose of preparing or issuing a report on the Company's internal controls, or perform other audit, review or attest services for the Company.

3. To pre-approve all audit and permitted non-audit and tax services that may be provided by the Company's independent auditors, and to establish such policies and procedures as the Committee deems necessary for the Committee's pre-approval of permitted services by the Company's independent auditors.

4. At least annually, to obtain and review a formal written statement by the Company's independent auditors that describes all relationships between the firm and the Company or any of its subsidiaries, consistent with Independence Standards Board Standard 1; and to actively engage in a dialogue with the independent auditors with respect to any disclosed relationships or services that may impact the objectivity and independence of the independent auditors.

5. To assure the required rotation of the lead audit partner at the Company's independent auditors.

6. To review and discuss with the Company's independent auditors (a) all critical accounting policies and practices used by the Company; (b) all alternative treatments of financial information within generally accepted accounting principles ("**GAAP**") that have been discussed with management, the ramifications of the use of such alternative treatments and the treatment preferred by the independent auditors; and (c) other material written communications between the independent auditors and management.

7. To review and discuss with the Company's independent auditors any other matters required to be discussed by *PCAOB Auditing Standards No. 16, Communications with Audit Committees*.

8. To review and discuss with the Company's independent auditors and management the Company's annual audited financial statements (including the related notes), the form of audit opinion to be issued by the auditors on the financial statements and the disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations" to be included in the Company's annual report on Form 10-K before the Form 10-K is filed.

9. To recommend to the Board that the audited financial statements be included in the Company's Form 10-K and to produce the audit committee report required to be included in the Company's proxy statement.

10. To review and discuss with the Company's independent auditors and management the Company's quarterly financial statements and the disclosure under "Management's Discussion and Analysis of Financial Condition and Results of Operations" to be included in the Company's quarterly report on Form 10-Q before the Form 10-Q is filed.

11. To review and discuss with management the Company's earnings press releases, including the type of information to be included and its presentation and the use of any pro forma or adjusted non-GAAP information, before their release to the public.

12. To establish and oversee procedures for: (a) the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters, and (b) the confidential, anonymous submission by Company employees of concerns regarding questionable accounting or auditing matters.

13. To review, approve and oversee any transaction between the Company and any related person (as defined in Item 404 of Regulation S-K).

14. To review and assess the Company's financial risk management process, including the adequacy of the company's overall financial control environment and controls in selected areas representing significant financial risk.

Outside Advisors

The Committee shall have the authority, in its sole discretion, to retain and obtain the advice and assistance of independent outside legal counsel and such other advisors as it deems necessary to fulfill its duties and responsibilities under this Charter. The Committee shall set the compensation and oversee the work of any outside legal counsel and other advisors.

The Committee shall receive appropriate funding from the Company, as determined by the Committee in its capacity as a committee of the Board, for the payment of compensation to the Company's independent auditors, any other accounting firm engaged to perform services for the Company, any outside legal counsel and any other advisors to the Committee.

Structure and Operations

The Board shall designate a member of the Committee as the chairperson. The Committee shall meet no less than four times annually and more frequently as circumstances require. At least quarterly, the meetings of the Committee shall include an executive session of the Committee, absent members of management, and an executive session with the independent auditors. The Committee shall report regularly to the Board regarding its actions and make recommendations to the Board as appropriate. The Committee is governed by the same rules regarding meetings (including meetings in person or by telephone or other similar communications equipment), action without meetings, notice, waiver of notice, and quorum and voting requirements as are applicable to the Board.

The chairperson and others on the Committee shall, to the extent appropriate, have contact throughout the year with senior management, other committee chairpersons, and other key Committee advisors, external and internal auditors, etc., as applicable, to strengthen the Committee's knowledge of relevant current and prospective business issues.

The Committee shall review this Charter at least annually and recommend any proposed changes to the Board for approval.

Delegation of Authority

The Committee shall have the authority to delegate any of its responsibilities, along with the authority to take action in relation to such responsibilities, to one or more subcommittees as the Committee may deem appropriate in its sole discretion. The Chair may represent the entire Committee, as a subcommittee, with respect to functions of the Committee undertaken between meetings. Any actions of a subcommittee shall be presented to the full Committee at its next scheduled meeting.

Performance Evaluation

The Committee shall conduct an annual evaluation of the performance of its duties under this Charter and shall present the results of the evaluation to the Board. The Committee shall conduct this evaluation in such manner as it deems appropriate.

Exhibit 99.2

BLUEJAY DIAGNOSTICS, INC.

CHARTER OF THE COMPENSATION COMMITTEE

MEMBERSHIP

The Compensation Committee (the "**Committee**") of the board of directors (the "**Board**") of Bluejay Diagnostics, Inc. (the "**Company**") shall consist of three or more directors. Each member of the Committee shall be independent in accordance with the rules of the Nasdaq Stock Market.

Each member of the Committee must qualify as "non-employee directors" for the purposes of Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and as "outside directors" for the purposes of Section 162(m) of the Internal Revenue Code, as amended.

The members of the Committee shall be appointed by the Board based on recommendations from the nominating and corporate governance committee of the Board. The members of the Committee shall serve for such term or terms as the Board may determine or until earlier resignation or death. The Board may remove any member from the Committee at any time with or without cause.

PURPOSE

The purpose of the Committee is to carry out the responsibilities delegated by the Board relating to the review and determination of executive compensation.

DUTIES AND RESPONSIBILITIES

The Committee shall have the following authority and responsibilities:

1. To annually review and recommend for approval by the Board the corporate goals and objectives applicable to the compensation of the chief executive officer ("**CEO**"), evaluate at least annually the CEO's performance in light of those goals and objectives, and recommend for approval by the Board, the CEO's compensation level based on this evaluation. In evaluating and determining CEO compensation, the Committee shall consider the results of the most recent stockholder advisory vote on executive compensation ("**Say on Pay Vote**") when such vote is required by Section 14A of the Exchange Act. The CEO cannot be present during any voting or deliberations by the Committee on his or her compensation.

2. To review and recommend for approval by the Board the compensation of all other executive officers. In evaluating executive compensation, the Committee shall consider the results of the most recent Say on Pay Vote.

3. To review, approve and, when appropriate, recommend to the Board for approval, incentive compensation plans and equity-based plans, and where appropriate or required, recommend for approval by the stockholders of the Company, which includes the ability to adopt, amend and terminate such plans. The Committee shall also have the authority to administer the Company's incentive compensation plans and equity-based plans, including designation of the employees to whom the awards are to be granted, the amount of the award or equity to be granted and the terms and conditions applicable to each award or grant, subject to the provisions of each plan. In reviewing and making recommendations regarding incentive compensation plans and equity-based plans, including whether to adopt, amend or terminate any such plans, the Committee shall consider the results of the most recent Say on Pay Vote.

4. To the extent such disclosure is required by the Exchange Act, to review and discuss with management the Company's Compensation Discussion and Analysis ("**CD&A**") and the related executive compensation information, recommend that the CD&A and related executive compensation information be included in the Company's annual report on Form 10-K and proxy statement and produce the compensation committee report on executive officer compensation required to be included in the Company's proxy statement or annual report on Form 10-K.

5. To review and make recommendations to the Board regarding any employment agreements and any severance arrangements or plans, including any benefits to be provided in connection with a change in control, for the CEO and other executive officers.

6. To review and discuss annually the Company's compensation arrangements to determine whether they encourage excessive risk-taking and to evaluate compensation policies and practices that could mitigate any such risk.

7. To the extent required by the Exchange Act, to review and recommend to the Board for approval the frequency with which the Company will conduct Say on Pay Votes, taking into account the results of the most recent stockholder advisory vote on frequency of Say on Pay Votes required by Section 14A of the Exchange Act, and review and approve the proposals regarding the Say on Pay Vote and the frequency of the Say on Pay Vote to be included in the Company's proxy statement.

8. The Committee shall discuss with the Board, the Committee's assessment of the Company's performance of its annual objectives for the purpose of confirming the accuracy of the Company's financial statements, including compensation reserves and accruals.

9. To review director compensation for service on the Board and Board committees at least once a year and to recommend any changes to the Board.

Outside Advisors

The Committee shall have the authority, in its sole discretion, to select, retain and obtain the advice of a compensation consultant as necessary to assist with the execution of its duties and responsibilities as set forth in this Charter. The Committee shall set the compensation and oversee the work of the compensation consultant. The Committee shall have the authority, in its sole discretion, to retain and obtain the advice and assistance of outside legal counsel and such other advisors as it deems necessary to fulfill its duties and responsibilities under this Charter. The Committee shall set the compensation and oversee the work of its outside legal counsel and other advisors. The Committee shall receive appropriate funding from the Company, as determined by the Committee in its capacity as a committee of the Board, for the payment of compensation to its compensation consultants, outside legal counsel and any other advisors. However, the Committee shall not be required to implement or act consistently with the advice or recommendations of its compensation consultant, outside legal counsel or other advisor to the Committee, and the authority granted in this Charter shall not affect the ability or obligation of the Committee to exercise its own judgment in fulfillment of its duties under this Charter.

The Committee may select a compensation consultant, outside legal counsel or other advisors only after taking into consideration all relevant factors, including the following: (i) the provision of other services to the Company by the person that employs the compensation consultant, outside legal counsel or other advisor; (ii) the amount of fees received from the Company by the person that employs the compensation consultant, outside legal counsel or other advisor, as a percentage of the total revenue of the person that employs the compensation consultant, outside legal counsel or other advisor; (iii) the policies and procedures of the person that employs the compensation consultant, outside legal counsel or other advisor that are designed to prevent conflicts of interest; (iv) any business or personal relationship of the compensation consultant, outside legal counsel or other advisor with a member of the compensation committee; (v) any stock of the Company owned by the compensation consultant, outside legal counsel or other advisor; and (vi) any business or personal relationship of the compensation consultant, outside legal counsel, other advisor or the person employing the advisor with an executive officer of the Company. The Committee may retain, or receive advice from, any compensation advisor they prefer, including ones that are not independent, after considering the above factors.

The Committee is not required to assess the independence of any compensation consultant or other advisor that acts in a role limited to consulting on any broad-based plan that does not discriminate in scope, terms or operation in favor of executive officers or directors and that is generally available to all salaried employees or providing information that is not customized for a particular company or that is customized based on parameters that are not developed by the consultant or advisor, and about which the consultant or advisor does not provide advice.

The Committee shall evaluate whether any compensation consultant retained or to be retained by it has any conflict of interest in accordance with Item 407(e)(3)(iv) of Regulation S-K.

Structure and Operations

The Board shall designate a member of the Committee as the chairperson. The Committee shall meet as often as it deems necessary to perform its responsibilities. The Committee shall report regularly to the Board regarding its actions and make recommendations to the Board as appropriate. The Committee is governed by the same rules regarding meetings (including meetings in person or by telephone or other similar communications equipment), action without meetings, notice, waiver of notice, and quorum and voting requirements as are applicable to the Board.

The Committee may invite such members of management to its meetings as it deems appropriate. However, the Committee shall meet regularly without such members present, and in all cases the CEO and any other such officers shall not be present at meetings at which their compensation or performance is discussed or determined.

The Committee shall review this Charter at least annually and recommend any proposed changes to the Board for approval.

Delegation of Authority

The Committee shall have the authority to delegate any of its responsibilities, along with the authority to take action in relation to such responsibilities, to one or more subcommittees as the Committee may deem appropriate in its sole discretion. The Chair may represent the entire Committee, as a subcommittee, with respect to functions of the Committee undertaken between meetings. Any actions of a subcommittee shall be presented to the full Committee at its next scheduled meeting.

Performance Evaluation

The Committee shall conduct an annual evaluation of the performance of its duties under this Charter and shall present the results of the evaluation to the Board. The Committee shall conduct this evaluation in such manner as it deems appropriate.

Exhibit 99.3

BLUEJAY DIAGNOSTICS, INC.

CHARTER OF THE NOMINATING AND CORPORATE GOVERNANCE COMMITTEE

MEMBERSHIP

The Nominating and Corporate Governance Committee (the "**Committee**") of the board of directors (the "**Board**") of Bluejay Diagnostics, Inc. (the "**Company**") shall consist of three or more directors. Each member of the Committee shall be independent in accordance with the rules of the Nasdaq Stock Market.

The members of the Committee shall be appointed by the Board. The members of the Committee shall serve for such term or terms as the Board may determine or until earlier resignation or death. The Board may remove any member from the Committee at any time with or without cause.

PURPOSE

The purpose of the Committee is to carry out the responsibilities delegated by the Board relating to the Company's director nominations process and procedures, developing and maintaining the Company's corporate governance policies and any related matters required by the federal securities laws.

DUTIES AND RESPONSIBILITIES

The Committee shall have the following authority and responsibilities:

1. To determine the qualifications, qualities, skills, and other expertise required to be a director and to develop, and recommend to the Board for its approval, criteria to be considered in selecting nominees for director (the "**Director Criteria**").

2. To identify and screen individuals qualified to become members of the Board, consistent with the Director Criteria. The Committee shall consider any director candidates recommended by the Company's stockholders pursuant to the procedures set forth in the Company's proxy statement. The Committee shall also consider any nominations of director candidates validly made by stockholders in accordance with applicable laws, rules and regulations and the provisions of the Company's charter documents.

3. To make recommendations to the Board regarding the selection and approval of the nominees for director to be submitted to a stockholder vote at the annual meeting of stockholder.

4. To annually review and assess the adequacy of the Company's corporate governance policies and procedures and the Company's Code of Ethics, and it shall recommend any proposed changes to the Board for approval. The Committee also shall consider corporate governance issues that arise from time to time and develop appropriate recommendations and policies for the Board regarding such matters.

5. To review the Board's committee structure and composition and to make recommendations to the Board regarding the appointment of directors to serve as members of each committee and committee chairperson annually.

6. If a vacancy on the Board and/or any Board committee occurs, to identify and make recommendations to the Board regarding the selection and approval of candidates to fill such vacancy either by election by stockholders or appointment by the Board.

Outside Advisors

The Committee shall have the authority, in its sole discretion, to select, retain and obtain the advice of a director search firm as necessary to assist with the execution of its duties and responsibilities as set forth in this Charter. The Committee shall set the compensation and oversee the work of the director search firm. The Committee shall have the authority, in its sole discretion, to retain and obtain the advice and assistance of outside legal counsel and such other advisors as it deems necessary to fulfill its duties and responsibilities under this Charter. The Committee shall set the compensation and oversee the work of its outside legal counsel and other advisors. The Committee shall receive appropriate funding from the Company, as determined by the Committee in its capacity as a committee of the Board, for the payment of compensation to its compensation consultants, outside legal counsel and any other advisors.

Structure and Operations

The Board shall designate a member of the Committee as the chairperson. The Committee shall meet as often as it deems necessary to perform its responsibilities. The Committee shall report regularly to the Board regarding its actions and make recommendations to the Board as appropriate. The Committee is governed by the same rules regarding meetings (including meetings in person or by telephone or other similar communications equipment), action without meetings, notice, waiver of notice, and quorum and voting requirements as are applicable to the Board.

The Committee shall review this Charter at least annually and recommend any proposed changes to the Board for approval.

Delegation of Authority

The Committee shall have the authority to delegate any of its responsibilities, along with the authority to take action in relation to such responsibilities, to one or more subcommittees as the Committee may deem appropriate in its sole discretion. The Chair may represent the entire Committee, as a subcommittee, with respect to functions of the Committee undertaken between meetings. Any actions of a subcommittee shall be presented to the full Committee at its next scheduled meeting.

Performance Evaluation

The Committee shall conduct an annual evaluation of the performance of its duties under this Charter and shall present the results of the evaluation to the Board. The Committee shall conduct this evaluation in such manner as it deems appropriate.